Jany 27-1860
Hdy Donahue -
Submitted Gothic side

Thurs, Jany 16-1862 argument on merits
of 83 -
Donahue 12.20
Owens 1.25

July-11. Donohue reply 12.25

SUPREME COURT OF THE UNITED STATES.

Nos. ~~823~~, ~~824~~. 83.

JOHN CLIFTON, CLAIMANT OF THE BRIG WATER WITCH, HER TACKLE, &c., APP'T,

vs.

WILLIAM H. SHELDON;

~~And~~

~~WILLIAM H. SHELDON, CLAIMANT OF A QUANTITY OF COTTON, &c., APP'T,~~

vs.

~~JOHN CLIFTON.~~

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Geo. S. Gideon, Printer, 511 Ninth street, near Penn. Avenue.

Judgment Grant - but must affirm
as decree Circuit Court
Jany 21-1862
Affirmed

SUPREME COURT OF THE UNITED STATES.

Nos. 323, 324.

JOHN CLIFTON, CLAIMANT OF THE BRIG WATER WITCH, HER TACKLE, &c., APP'T,

vs.

WILLIAM H. SHELDON;

And

WILLIAM H. SHELDON, CLAIMANT OF A QUANTITY OF COTTON, &c., APP'T,

vs.

JOHN CLIFTON.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, Kenneth G. White, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this [L. S.] seventh day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the said United States the eighty-fourth.

KENNETH G. WHITE, *Clerk*.

1 To the Honorable R. Samuel Betts, judge of the District Court of the United States for the southern district of New York:

The libel and complaint of John H. Brower and Benjamin B. Blydenburgh, of the city of New York, merchants, against the brig Water Witch, her tackle, apparel, and furniture, and freight upon the cargo hereafter mentioned, in a cause of contract, civil and maritime; and thereupon the libellants allege and articulately propound as follows:

First. That the aforesaid brig is a foreign vessel, owned by some person or persons unknown to the libellants; and that she
2 is now lying in the port of New York, and within the jurisdiction of this court.

Second. That heretofore, and on or about the ninth day of May, in the year 1854, the said brig was lying at the port of Lavaca, in the State of Texas, and that a contract of affreightment was then and there made by and between one J. Mitchel, acting in that respect, as the agent, and for and on behalf of the said vessel, and having authority so to act, of the one part, and R. M.
3 Forbes, of the other part, for the carrige of certain cotton in the said vessel from thence to New York; which said agreement was reduced to writing, and was signed by the respective parties, and is in the words and figures following, to wit:

Mem.—Agreement made and entered into the ninth day of May, A. D. 1854, between J. Mitchell, of the one part, and R. M. Forbes, of the other part.

The said J. Mitchell contracts and binds himself to take on board the brig "Water Witch" 300 to 400 bales of cotton, accord-

ing to the capacity of the vessel, the cotton to be delivered at Lavaca on board the lighter furnished by the s'd Mitchell as it is wanted, and to be placed by him on ship-board free of charge to the said R. M. Forbes, and taken to New York at the rate of $1\frac{1}{4}$ cents per pound, and primage as customary; and the s'd R. M. Forbes agrees to deliver the said quantity of cotton as it is required. It is also understood and agreed that, if at the expiration of ten days from this date the s'd vessel shall not be ready to receive cargo, then this agreement shall be void, or subject to be renewed at the pleasure of the contracting parties.

Signed in duplicate the day and year above written.

(Signed) J. MITCHELL,
R. M. FORBES.

That the contract so made by the said Mitchell was duly authorized by the master of the said vessel, or was known and assented to and approved of by him, and the same became and was and is valid and binding upon the said vessel and her owners.

Third. That afterwards, and in pursuance of such contract and agreement, and on or about the 14th June, in the year aforesaid, at Lavaca aforesaid, the said R. M. Forbes shipped, or caused and procured to be shipped and laden, in and on board of the said vessel a large quantity of cotton—that is to say, (sixty-seven) bales thereof, of the value of $, or thereabouts, to be carried and transported in and on board of the said vessel to the port of New York, and there delivered upon payment of freight therefor. That the master of the said vessel, his agents and servants, duly accepted and received the said sixty-seven bales of cotton, and then and there acknowledged the receipt thereof, on board of the said vessel, and did then and there, in substance and effect, agree to sign bills of lading therefor, according to usage and custom, and did undertake to carry and transport the said sixty-seven bales of cotton from thence to the port of New York, and there to deliver the same to the said R. M. Forbes, or his assigns, in as good order and condition as when received, he or they paying freight for the same at and after the rate agreed upon in and by the aforesaid contract of affreightment.

Fourth. That after the shipment of the said cotton, and before the departure of the said vessel, the master of the said vessel was requested to sign bills of lading therefor in the usual form, according to his agreement, and the usage and custom of merchants, but the said master then and there refused so to do, and would not and did not sign the bills of lading presented to him for that purpose, or any other bills of lading to the knowledge or belief of the libellants. That in and by the bills of lading so tendered to the

master for his signature the libellants were named as the
9 consignees of the said sixty-seven bales of cotton, and they were and are in fact the consignees thereof, and interested therein, and entitled to have and receive the same into their possession.

Fifth. That the said vessel afterwards set sail and departed from Lavaca aforesaid, bound for the port of New York, with the aforesaid cotton in and on board thereof; that she afterwards, and on or about the 17th day of August, 1854, arrived at the said port of New York, and that although a sufficient and reasonable
10 time for that purpose has elapsed since such arrival, and although the libellants have been at all times ready and willing to accept and receive the said cotton in the like order and condition as when shipped on board of the said vessel, (dangers of the sea excepted,) and although they have demanded and are entitled to the delivery thereof, and have been and are ready to pay the freight and primage thereon, yet the master of the said vessel has not and will not deliver the said cotton; and, as the libellants allege, he cannot deliver the same in as good order and con-
11 dition as when received by him, although no dangers of the seas or other legal exceptions have prevented it; but, on the contrary, the said cotton is in fact, and will so prove to be upon delivery, greatly injured and damaged by reason of bad stowage, and other acts, omissions, negligence, want of care and attention, on the part of the master and owners of the said vessel, or their servants in this behalf; and that such damages do and will greatly exceed the freight and primage upon the said cotton, and will amount, in the belief and opinion of the libellants, to a
12 sum exceeding $1,500 over and above the freight and primage aforesaid.

Sixth. That the owners of the said vessel are, as the libellants are informed and believe, non-residents of this State, and they fear, and have reason to fear, that the said vessel will depart from this port, leaving the damages aforesaid unsettled, unless arrested by process from this court. They further say that they have made advances upon the said cotton, and are thereby and otherwise interested in, and entitled to have and receive the same, which rights and interests, as consignees of said cotton, have been recognised by the master and consignees of the said
13 vessel. They further say, that they have been injured by the non-delivery of the said cotton, pursuant to the agreement aforesaid, and have sustained damages thereby, which the said vessel is liable to pay. They further say that they have requested the master and agents of the vessel to deliver the said cotton, and to adjust and settle with them the damages aforesaid, but such requests have been declined.

Seventh. That all and singular the premises are true, and within

the maritime and admiralty jurisdiction of this court, in
14 verification whereof, if denied, the libellants crave leave to refer to the depositions and other proof to be by them exhibited in this cause.

Wherefore the libellants pray that process in due form of law, according to the course of courts of admiralty, and of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel and furniture, and freight, wheresoever the same shall be found, and that all persons having or pretending to have any right, title or interest in the said vessel, may be cited to appear and answer upon oath all and singular the matters so articulately propounded, and
15 that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other relief in the premises as shall to law and justice appertain, and also to condemn the said vessel, her freight, tackle, apparel and furniture, and all persons intervening for their interest therein, in costs.

B. B. BLYDENBURGH.

Sworn before me this 29 day of August, 1854.

GEO. W. MORTON,
U. S. Comm'r.

Endorsed: 12. 58. U. S. district court. John H. Brower et al. vs. The Brig Water Witch, her tackle, &c. Libel. Owen,
16 Betts & Vose, lib'ts' proctors. Filed Aug 29, 1854.

Let notice in the within cause be published by the marshall until the 12th of September next. Aug't 30th, 1854.

CHAS. A. INGERSOLL,
Dis't Judge.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The libel and complaint of William Henry Sheldon, of the city of New York, merchant, against the brig Water Witch, her tackle, apparel and furniture, and freight upon the cargo hereafter mentioned, in a case of contract, civil and maritime; and there-
17 upon the libellant alleges and articulately propounds as follows:

First. That the aforesaid brig is a foreign vessel, owned by some person or persons, unknown to the libellant, and that she is now lying in the port of New York, and within the jurisdiction of this court.

Second. That heretofore, and on or about the 9th day of May, 1854, the said brig was lying at the port of Lavaca, in the State of Texas, and that a contract of affreightment was then and there

made by and between one J. Mitchell, acting in that respect as the agent, and for and on behalf of the said vessel, and
18 having authority so to act, of the one part, and R. M. Forbes of the other part, for the carriage of certain cotton in the said vessel from thence to New York, which said agreement was reduced to writing, and was signed by the respective parties, and is in the words and figures following, to wit:

Mem.—Agreement made and entered into this ninth day of May, A. D. 1854, between J. Mitchell, of the one part, and R. M. Forbes, of the other part.

The said J. Mitchell contracts and binds himself to take
19 on board the brig "Water Witch" 300 to 400 bales of cotton, according to the capacity of the vessel; the cotton to be delivered at Lavaca, on board the lighter, furnished by the said Mitchell, as it is wanted, and to be placed by him on ship-board free of charge to the s'd R. M. Forbes, and taken to New York, at the rate of 1¼ cents per pound and primage, as customary; and the s'd R. M. Forbes agrees to deliver the said quantity of cotton as it
20 is required. It is also understood and agreed, that if, at the expiration of ten days from this date, the s'd vessel shall not be ready to receive cargo, then this agreement shall be void, or subject to be renewed at the pleasure of the contracting parties.

Signed in duplicate, the day and year above written.

(Signed) J. MITCHELL,
R. M. FORBES.

That the contract so made by the said Mitchell was duly authorized by the master of the said vessel, or was known and assented to and approved of by him, and the same became and was and is valid and binding upon the said vessel and her
21 owners.

Third. That afterwards, and in pursuance of such contract and agreement, and at sundry times prior to the 8th June, in the year aforesaid, at Lavaca aforesaid, the said R. M. Forbes shipped, or caused and procured to be shipped and laden in and on board of the said vessel, a large quantity of cotton—that is to say, 202 bales thereof, parcel of the cotton in the aforesaid agreement mentioned, of the value of $9,000, or thereabouts, to be carried and transported in and on board of the said vessel to
22 the port of New York, and there delivered upon payment of freight therefor. That the master of the said vessel, his agents, and servants, duly accepted and received the said 202 bales of cotton, and then and there acknowledged the receipt thereof on board the said vessel, and did then and there, in substance and effect, agree to sign bills of lading therefor, according to usage

and custom, and did undertake to carry and transport the said 202 bales of cotton from thence to New York, and there to deliver
23 the same to the said R. M. Forbes or his assigns, in as good order and condition as when received, he or they paying freight for the same, at and after the rate agreed upon in and by the aforesaid contract of affreightment.

Fourth. That after the shipment of the said cotton, and before the departure of the said vessel, the master of the said vessel was requested to sign bills of lading therefor in the usual form, according to his agreement, and the usage and custom of merchants; but the said master then and there refused so to do, and would
24 not and did not sign the bills of lading presented to him for that purpose, or any other bills of lading therefor, to the knowledge or belief of the libellant; that in and by the bills of lading so tendered to the master for his signature, the firm of Henry Sheldon & Co. were named as the consignees of the said 202 bales of cotton, and they were in fact the consignees thereof and interested therein, and they or their assigns were entitled to have and receive the same into their possession. That the said Henry Sheldon & Co. subsequently assigned and transfer-
25 red the said cotton to the libellant, who became and was and is the consignee thereof, and entitled to have and receive the same from the said vessel.

Fith. That the said vessel afterwards set sail and departed from Lavaca aforesaid, bound for the port of New York, with the aforesaid cotton in and on board thereof; that she afterwards, and on or about the 17th day of August, 1854, arrived at the said port of New York, and that although a sufficient and reasonable time for that purpose has elapsed since such arrival, and although the
26 libellant has been at all times ready and willing to accept and receive the said cotton in the like order and condition as when shipped on board of the said vessel, (dangers of the seas excepted,) and although he has demanded and is entitled to the delivery thereof, and has been and is ready to pay the freight and primage thereon, yet the said master of the said vessel, although he has delivered 20 bales thereof, has not and will not deliver the residue of the said cotton; and, as the libellant alleges, he
27 cannot deliver the same in as good order and condition as when received by him, although no dangers of the seas or other legal exceptions have prevented it; but, on the contrary, the said cotton is in fact, and will so prove to be upon delivery, greatly injured and damaged, by reason of bad stowage and other acts—omissions, negligence, want of care, and attention on the part of the master and owners of the said vessel, or their servants in this behalf, and that such damages do and will greatly exceed the freight and primage upon the said cotton, and will
28 amount, in the belief and opinion of the libellant, to a sum

exceeding $5,000, over and above the freight and primage aforesaid.

Sixth. That the owners of the said vessel are, as the libellant is informed and believes, non-residents of this State; and he fears, and has reason to fear, that the said vessel will depart from this port, leaving the damages as aforesaid unsettled, unless arrested by process from this court. He further says, that he has made advances upon the said cotton, and is thereby and otherwise interested in and entitled to have and receive the same, which rights and
29 interests, as consignee of said cotton, have been recognised by the master and consignees of the said vessel. He further says, that he has been injured by the non-delivery of the said cotton, pursuant to the agreement aforesaid, and has sustained damages thereby, which the said vessel is liable to pay. He further says, that he has requested the master and agents of the vessel to deliver the said cotton, and to adjust and settle with him the damages aforesaid, but such requests have been declined.

Seventh. That all and singular the premises are true, and
30 within the maritime and admiralty jurisdiction of this court; in verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the libellant prays that process, in due form of law, according to the course of courts of admiralty and of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture and freight, wheresoever the same shall be found, and that all persons having, or pretending to have, any right, title, or interest
31 in the said vessel, may be cited to appear, and answer upon oath all and singular the matters so articulately propounded; and that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other relief in the premises as shall to law and justice appertain; and also to condemn the said vessel, her freight, tackle, apparel, and furniture, and all persons intervening for their interest therein, in costs.

WM. HENRY SHELDON.

Sworn before me this 29th day of August, 1854.

GEO. W. MORTON,
U. S. Com.

OWEN, BETTS & VOSE,
Libl'ts' Proctors.

Endorsed: U. S. district court. 12. 59. W. H. Sheldon vs. The Brig Water Witch, her tackle, &c. Libel.
32 Filed Aug. 29, 1854. Owen, Betts & Vose, libell'ts' proc's.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

[SEAL.]

The President of the United States of America to the Marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by John H. Brower et al., against the brig Water Witch, her tackle, &c., and the freight on the cargo
33 laden on board, claim $1,500, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said brig or vessel, her tackle, &c., and freight, may be cited in general and special to answer the premises, and all proceedings being had, that the said brig or vessel, her tackle, &c., and freight, may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said
34 brig or vessel, her tackle, &c., and freight, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the twelfth day of September next, at eleven o'clock in the forenoon of the
35 same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-ninth.

36 GEO. WELLORTON, *Clerk.*

OWEN, BETTS & VOSE,
Proctors for Libellant.

In obedience to the within monition, I attached the brig Water Witch and the freight and tackle therein described, on the 29th day of August, 1854, and have given due notice to all persons claiming the same that this court will, on the 12th day of Sept.

inst., (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for
37 the same.

AB. T. HILLYER,
U. S. Marshal.

Dated 12 Sep., 1854.

Monition ret'ble Sept. 12, 1854.

OWEN, BETTS & VOSE,
Proctors for Libellant.

Filed Sept. 12th, 1854.

I hereby depute to execute the within process.
38 Dated , 185 .

U. S. Marshal.

To the Honorable Samuel R. Betts, judge of the District Court of the United States for the southern district of New York:

The libel of John Clifton, owner of the brig Water Witch, against a quantity of cotton, said to contain two hundred and sixty-nine bales cotton, and nine bags wool, respectfully shows:

First. That this is an action founded upon contract, civil and maritime, and said cotton and wool is in this district.

39 Second. That libellant is and was the owner of the brig Water Witch, and carried and conveyed in said vessel from Matagorda bay to New York certain merchandise, to wit, the above cotton, which he offered to deliver to the person entitled thereto, on payment of the freight, which is seventeen hundred and sixty-one $\frac{43}{100}$, which, with the charges against said cotton, amounts, in all, to $1,936 43.

Third. That payment has been demanded.

Fourth. That all and singular the premises are true.

Wherefore libellant prays for a monition and attachment,
40 and that this court would be pleased to pronounce for the claim aforesaid and costs, or for such relief as may be just.

JOHN CLIFTON,
By A. H. T. SIMPSON.

Sworn to before me this 1st day of Sept., 1854.

CH'S DONOHUE, *Proctor for Libellant.*
W. R. BEEBE, *Advocate.*

Endorsed: 12. 64. U. S. District Court. John Clifton vs. a quantity of cotton, said to contain 269 bales, and 9 bags wool. Libel. C. Donohue, proc. lib't. Filed Sept. 1, 1854.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

41 The President of the United States of America to the Marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the first day of September, in the year of our Lord one thousand eight hundred and fifty-four, by John Clifton against a quantity of cotton, said to contain 269 bales, and 9 bags wool, freight $1,761 43, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that
42 behalf to be made, and that all persons interested in the said cotton and wool may be cited in general and special to answer the premises, and all proceedings being had that the said cotton and wool may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said cotton and wool, and to detain the same in your custody until the further order of the court respecting the same, and to give due no-
43 tice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the nineteenth day of September next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you
44 shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel R. Betts, judge of the said court, at the city of New York, in the southern district of New York, this first day of September, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-ninth.

GEO. W. MORTON, *Clerk.*

C. DONOHUE, *Proctor for Libellant.*

In obedience to the within monition, I attached the quantity of cotton, said to contain 269 bales, and nine bags wool, therein described, on the 1st day of September, and have given due notice to all persons claiming the same that this court will, on the
45 19th day of September inst., (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

AB'M T. HILLYER,
U. S. Marshal.

Dated Sept. 19th, 1854.

Monition ret'ble Sept. 19th, 1854.

C. DONOHUE,
Proctor for Libellant.

Filed Sept. 19th, 1854.

I hereby depute George Niven to execute the within process.

46 Dated Sept. 1st, 1854.

AB. T. HILLYER,
U. S. Marshal.

District Court of the United States, for the southern district of New York.

Filed the 29 day of August, 1854.

Stipulation for Libellants' Costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by John H. Brower et al., against the brig Water
47 Witch, her tackle, &c., for the reasons and causes in the said libel mensioned, and praying that process in rem may issue against said brig, and the said libellants and William H. Sheldon, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for
48 the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

B. B. BLYDENBURGH,
WM. HENRY SHELDON.

Taken and acknowledged this 29th day of Aug't, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Wm. H. Sheldon, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of
49 Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

WM. HENRY SHELDON.

Sworn to this 29th day of Aug't, 1854, before me.
GEO. W. MORTON,
U. S. Commissioner.

Recorded the 29th day of Aug't, 1854.
G. W. M., *Clerk.*

District Court of the United States, for the southern district of New York.

Filed the 29th day of Aug't, 1854.

Stipulation for Libellants' Costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the twenty-
50 ninth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by William H. Sheldon, against the brig Water Witch, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that process in rem may issue against said brig, and the said libellant and B. B. Blydenburgh, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels, and lands, for the sum of two hundred and fifty dollars:

51 Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

WM. HENRY SHELDON,
B. B. BLYDENBURGH.

Taken and acknowledged this 29th day of Aug., 1854, before me.
GEO. W. MORTON,
U. S. Commissioner.

52 SOUTHERN DISTRICT OF NEW YORK, *ss.*

B. B. Blydenburgh, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.
B. B. BLYDENBURGH.

Sworn to this 29th day of Aug., 1854, before me.
GEO. W. MORTON,
U. S. Commissioner.

Recorded the 29th day of Aug., 1854.

G. W. M., *Clerk.*

District Court of the United States, for the southern district of New York.

53 Filed the first day of September, 1854.

Stipulation for Libellant's Costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court on the first day of September, in the year of our Lord one thousand eight hundred and fifty-four, by John Clifton, owner of the brig Water Witch, against a quantity of cotton said to contain 269 bales, and 9 bags of wool, for the reasons and causes in the said libel mentioned, and praying that said 269 bales of cotton and 9 bags of wool
54 may be condemned and sold to pay the demands of the libellant; and the said libellant and John E. Devlin, surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is bound in the sum of two hundred
55 and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such cost as shall be awarded against him by this court, or in case of appeal, by the appellate court.

JOHN CLIFTON,
By A. H. T. SIMPSON.
JNO. E. DEVLIN.

Taken and acknowledged this 1st day of Sept., 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John E. Devlin, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of
56 Brooklyn, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JNO. E. DEVLIN.

Sworn to this 1st day of Sept., 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 1st day of Sept., 1854.

G. W. M., *Clerk.*

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

John H. Brower, Benjamin B. Blydenburgh, and William Henry Sheldon, of the said southern district of New York, consign-
57 ees of a quantity of cotton, said to contain two hundred and sixty-nine bales, and nine bags of wool, intervening for their interest in the same, appear before this honorable court, and claim the said cotton and wool, and state that they are the true and bona fide consignees, under advances, and entitled to the possession thereof, and that no other person is entitled to the possession thereof.

And thereupon the said claimants pray that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

J. H. BROWER & CO.,
By B. B. BLYDENBURGH.
WM. HENRY SHELDON.

58 Sworn this 1st day of September, 1854, before me.
GEO. W. MORTON,
U. S. Com'r.

Endorsed: 12. 64. U. S. District Court. John Clifton vs. 269 bales cotton and 9 bags wool. Claim. Filed Sept. 1st, 1854.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Wednesday, the 30th day of August, in the year of our Lord one thousand eight
59 hundred and fifty-four.

Present, the Honorable Chas. A. Ingersoll, district judge.

JOHN H. BROWER et al.
vs.
THE BRIG WATER WITCH, her tackle, &c. } Vol. 12, page 58.

On filing the order of the district judge, and on motion of Owen, Betts, and Vose, proctors for the libellants, it is ordered that the notice in the above entitled cause be published by the marshal, until the 12th of September next.

60 Filed the 30th day of August, 1854.

District Court of the United States, for the southern district of New York.

Filed the 12th day of Sept., 1854.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the twenty-ninth day

of August, in the year of our Lord one thousand eight hundred and fifty-four, by John H. Brower et al. against the brig Water Witch, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said brig, her tackle,
61 &c., may be condemned and sold to pay the demands of the libellants, and the parties hereto bereby consenting, that in case of default or contumacy on the part of the claimant or his surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim is about to be filed in said cause by John Clifton:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum of two
62 hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal by the appellate court.

A. H. T. SIMPSON, *Agent for*
JOHN CLIFTON.
JNO. E. DEVLIN.
DAVID S. DRAPER,
By JOHN E. DEVLIN,
Agent.

Taken and acknowledged this 12th day of Sept., 1854, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John E. Devlin, party to the above stipulation, being duly sworn, doth depose and say that he does business No. 98
63 Wall st., N. Y., and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JNO. E. DEVLIN.

Sworn to this 12th day of Sept., 1854, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the 12th day of Sept., 1854.

G. W. M., *Clerk.*

District Court of the United States, for the southern district of New York.

Filed the 12th day of September, 1854.

Stipulation entered into pursuant to the rules and practice of this court.

64 Whereas a libel was filed in this court, on the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by William H. Sheldon against the brig Water Witch, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said brig might be condemned and sold to pay the demands of the libellant, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimant or his surety, execution for the sum of two hundred and fifty dollars may issue against their goods,
65 chattels and lands:

And whereas, also, a claim has been filed in said cause by John Clifton:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal, by the appellate court.

A. H. T. SIMPSON, *Agent for*
JOHN CLIFTON.
JNO. E. DEVLIN.
DAVID L. DRAPER,
By JNO. E. DEVLIN, *Agent.*

Taken and acknowledged, this 12th day of September,
66 1854, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

John E. Devlin, party to the above stipulation, being duly sworn, doth depose and say, that he does business No. 98 Wall st., N. Y., and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JNO. E. DEVLIN.

Sworn to this 12th day of Sept'r, 1854, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

67 Recorded the 12th day of Sept., 1854.

G. W. M., *Clerk.*

District Court of the United States, for the southern district of New York.

Filed the first day of September, 1854.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the first day of September, in the year of our Lord one thousand eight hundred and fifty-four, by John Clifton, against a quantity of cotton, said to contain 269 bales, and 9 bags wool, for the reasons and
68 causes in the said libel mentioned, and praying that process of attachment in rem may issue against the said cotton, &c., and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels and lands:

And whereas, also, a claim is about to be filed in said cause by John H. Brower and others:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby bound in the sum of
69 two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal, by the appellate court.

B. B. BLYDENBURGH,
WM. HENRY SHELDON,
JAMES W. DUNLOP.

Taken and acknowledged, this first day of September, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

James W. Dunlop, party to the above stipulation, being duly , depose and say that he resides in the city of Brook-
70 lyn; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

JAMES W. DUNLOP.

Sworn to this first day of September, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

Recorded the 1st day of September, 1854.

G. W. M., *Clk.*

District Court of the United States of America, for the southern district of New York.

Filed the first day of September, 1854.

Know all men by these presents, that we, Benjamin B. Blyden-

burgh, William Henry Sheldon and James W. Dunlop, are
71 held and firmly bound unto Ab'm T. Hillyer, marshal of the United States for the southern district of New York, in the sum of thirty-five hundred dollars, to be paid to the said Ab'm T. Hillyer, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the first day of September, in the year of our Lord one thousand eight hundred and fifty-four.

72 Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the first day of September, in the year of our Lord one thousand eight hundred and fifty-four, by John Clifton, libellant, against 269 bales of cotton and nine bags of wool, for the sum of seventeen hundred and sixty-one $\frac{43}{100}$ dollars, on which process of attachment has issued, and the said cotton and wool is in custody of the marshal under the said attachment, and Blydenburgh and Sheldon have applied for a discharge of said cotton and wool from the cus-
73 tody of the marshal, and have filed a claim claiming the said cotton and wool as owners, and has filed a stipulation for the claimants' costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above bounden Blydenburgh and Sheldon shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

B. B. BLYDENBURGH, [L. S.]
WM. HENRY SHELDON, [L. S.]
JAS. W. DUNLOP. [L. S.]

Sealed and delivered, and taken and acknowledged, this
74 1 day of September, 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Benjamin B. Blydenburgh, Wm. Henry Sheldon and James W. Dunlop, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of four thousand dollars over and above all his just debts and liabilities.

B. B. BLYDENBURGH,
WM. H. SHELDON,
JAMES W. DUNLOP.

Sworn to this first day of Sept., A. D. 1854, before me.

GEO. W. MORTON,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within
75 bond. Dated this first day of Sept., 1854.

SAM. R. BETTS.

Recorded the first day of Sept., 1854.

G. W. M.

District Court of the United States of America, for the southern district of New York.

Filed the 12th day of Sept'r, 1854.

Know all men by these presents, that we, John Clifton, and John E. Devlin, and David S. Draper, composing the firm of Draper & Devlin, are held and firmly bound unto Abraham T. Hillyer, marshal of the United States for the southern dis-
76 trict of New York, in the sum of eight thousand dollars, to be paid to the said Abraham T. Hillyer, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-four.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the twenty-
77 ninth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by William H. Sheldon, libellant, against the brig Water Witch, for the sum of four thousand dollars, on which process of attachment has issued, and the said brig is in custody of the marshal under the said attachment, and John Clifton has applied for a discharge of said brig from the custody of the marshal, and has filed a claim claiming the said brig as owner, and has filed a stipulation for the claimants' costs, pursuant to the rules and practice of the said court: Now,
78 therefore, the condition of this obligation is such, that if the above bounden John Clifton, John E. Devlin, and David S. Draper shall abide by and perform the decree of this court, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

A. H. T. SIMPSON, Agent for
JOHN CLIFTON. [L. S.]
JNO. E. DEVLIN. [L. S.]
DAVID S. DRAPER, [L. S.]
By JOHN E. DEVLIN, *Agent*.

Sealed and delivered, and taken and acknowledged, this 12th day of Sept'r, 1854, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

79 John E. Devlin, being duly sworn, deposes and says that he does business No. 98 Wall st., city of New York, and that he is worth the sum of eight thousand dollars, over and above all his just debts and liabilities.

JNO. F. DEVLIN.

Sworn to this 12th day of Sept'r, A. D. 1854, before me.
J. BRIDGHAM,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this twelfth day of Sept'r, 1854.

SAM. R. BETTS.

Recorded the 12th day of Sept'r, 1854.

G. W. M.

District Court of the United States of America, for the southern district of New York.

Filed the 12th day of September, 1854.

80 Know all men by these presents, that we, John Clifton and John E. Devlin and David S. Draper, composing the firm of Draper & Devlin, are held and firmly bound unto Abraham T. Hillyer, marshal of the United States for the southern district of New York, in the sum of three thousand dollars, to be paid to the said Abraham T. Hillyer, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and
81 severally, firmly by these presents. Sealed with our seals, and dated the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-four.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the twenty-ninth day of August, in the year of our Lord one thousand eight hundred and fifty-four, by John H. Brower et al., libellants, against the brig Water Witch, for the sum of fifteen hundred dollars, on which process of attachment has issued, and the said brig is in custody of the marshal under the said attachment, and John
82 Clifton has applied for a discharge of said brig from the custody of the marshal, and has filed a claim claiming the said brig as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above bounden John Clifton, John E. Devlin, and David S. Draper shall abide by and perform the decree of this court, then

this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

A. H. T. SIMPSON, *Agent for*
JOHN CLIFTON. [L. S.]
JNO. E. DEVLIN. [L. S.]
DAVID S. DRAPER,
By JNO. E. DEVLIN.

83 Sealed and delivered and taken and acknowledged, this 12th day of Sept., 1854, before me.

JOSEPH BRIDGHAM,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

John E. Devlin, being duly sworn, deposes and says that he does business No. 98 Wall st., city of New York, and that he is worth the sum of three thousand dollars, over and above all his just debts and liabilities.

JNO. E. DEVLIN.

Sworn to this 12th day of Sept., A. D. 1854, before me.

JOSEPH BRIDGHAM,
84 *U. S. Commissioner.*

I approve of the sufficiency of the sureties to the within bond. Dated this twelfth day of Sept., 1854.

SAM. R. BETTS.

Recorded the 12th day of Sept., 1854.

G. W. M., *Clk.*

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the twelfth day of September, in the year of our Lord one thousand eight hundred and fifty-four. Present, the Honorable Samuel R. Betts, district judge.

85 THE BRIG WATER WITCH, her tackle, &c., } Vol. page .
asm.
JOHN H. BROWER and al.

On filing claim stip. clm'ts' costs, with a bond, under the act of Congress, in double the amount approved by the district judge, on motion of Chas. Donohue, proct. for clm'ts, it is ordered that a copy of this order be delivered to the marshal.

Filed the 12th day of September, 1854.

To the Honorable Samuel R. Betts, Judge of the District
86 Court of the United States for the southern district of New York:

The answer of John H. Brower and William Henry Sheldon, claimants of 269 bales of cotton and nine bags of wool, intervening for their interest therein, to the libel and complaint of John Clifton, alleges as follows:

First. That the claimants are consignees of the said 269 bales of cotton and nine bags of wool, and are the assignees and holders of the contract of affreightment and bills of lading in reference thereto, hereinafter mentioned, and have advanced large sums of money upon the credit thereof, and are entitled to the pos-
87 session thereof.

Second. That the claimants have no knowledge nor information sufficient to form a belief that the libellant is the sole owner of the brig "Water Witch," and therefore deny the same; and they further deny that the libellant ever offered to these claimants to deliver the aforesaid cotton, (these claimants being the only persons entitled to the possession thereof,) on payment of freight or otherwise; and they further deny that the freight on the same amounts to $1,761 $\frac{43}{100}$, or that there is any charge whatever
88 over and above said freight, with which said cotton or these claimants are properly chargeable.

And they further deny that payment of freight has been demanded of these claimants, (these claimants being the only persons upon whom demand for such payment could properly have been made.)

Third. That, heretofore, and on or about the 9th day of May, 1854, the said brig was lying at the port of Lavaca, in the State of Texas, and that a contract of affreightment was then and there made by and between one J. Mitchell, acting in that respect
89 as the agent and for and on behalf the said vessel, and having authority so to act, of the one part, and R. M. Forbes of the other part, for the carriage of certain cotton in the said vessel from thence to New York; which said agreement was reduced to writing and was signed by the respective parties, and is in the words and figures following, to wit:

"Mem.—Agreement, made and entered into this ninth day of May, A. D. 1854, between J. Mitchell, of the one part, and R. M. Forbes of the other part:

"The said J. Mitchell contracts and binds himself to take
90 on board the brig Water Witch 300 to 400 bales of cotton, according to the capacity of the vessel. The cotton to be delivered at Lavaca, on board the lighter furnished by the said Mitchell, as it is wanted, and to be placed by him on ship-board free of charge to the said R. M. Forbes, and taken to New York,

at the rate of 1¼ cents per pound, and primage as customary; and the said R. M. Forbes agrees to deliver the said quantity of
91 cotton as it is required. It is also understood and agreed, that if at the expiration of ten days from this date the said vessel shall not be ready to receive cargo, then this agreement shall be void, or subject to be renewed, at the pleasure of the contracting parties.

"Signed in duplicate, the day and year above written.

"(Signed) J. MITCHELL,
"R. M. FORBES."

That the contract so made by the said Mitchell was duly authorized by the master of the said vessel, or was known and assented to and approved of by him, and the same became and was
92 and is valid and binding upon the said vessel and her owners.

Fourth. That afterwards, and in pursuance of such contract and agreement, and at sundry times prior to the 8th June, in the year aforesaid, at Lavaca aforesaid, the said R. M. Forbes shipped, or caused and procured to be shipped, and laden in and on board of the said vessel a large quantity of cotton—that is to say, 269 bales thereof, parcel of the cotton in the aforesaid agreement mentioned, of the value of $9,000 or thereabouts, to be carried and trans-
93 ported in and on board of the said vessel to the port of New York, and there delivered upon payment of freight therefor. That the master of the said vessel, his agents and servants, duly accepted and received the said 269 bales of cotton, and then and there acknowledged the receipt thereof on board the said vessel, and did then and there, in substance and effect, agree to sign bills of lading therefor according to usage and custom, and did undertake to carry and transport the said 269 bales of cotton from thence to New York, and there to deliver the same to the said R.
94 M. Forbes, or his assigns, in as good order and condition as when received, he or they paying freight for the same, at and after the rate agreed upon in and by the aforesaid contract of affreightment.

Fifth. That after the shipment of the said cotton, and before the departure of the said vessel, the master of the said vessel was requested to sign bills of lading therefor in the usual form, according to his agreement and the usage and custom of merchants, but the said master then and there refused so to do, and would
95 not, and did not, sign the bills of lading presented to him for that purpose, or any other bills of lading therefor, to the knowledge or belief of the claimants. That in and by the bills of lading so tendered to the master for his signature, the firm of Henry Sheldon & Co. were named as the consignees of the said 269 bales of cotton, and they were in fact the consignees thereof

and interested therein, and they or their assigns were entitled to have and receive the same into their possession. That the said Henry Sheldon & Co. subsequently assigned and transferred
96 the said cotton to the claimants, who became and were and are the consignees thereof, and entitled to have and receive the same from the said vessel.

Sixth. That the said vessel afterwards set sail and departed from Lavaca aforesaid, bound for the port of New York, with the aforesaid cotton in and on board thereof. That she afterwards, and on or about the 17th day of August, 1854, arrived at the said port of New York, and that although a sufficient and reasonable time for that purpose has elapsed since such arrival, and although
97 the claimants have been at all times ready and willing to accept and receive the said cotton, in the like order and condition as when shipped on board of the said vessel, (dangers of the seas excepted,) and although they have demanded and are entitled to the delivery thereof, and have been and are ready to pay the freight and primage thereon, yet the said master of the said vessel, although he has delivered 20 bales thereof, has not and will not deliver the residue of the said cotton, and, as the claim-
98 ants allege, he cannot deliver the same in as good order and condition as when received by him, although no dangers of the seas or other legal exceptions have prevented it, but, on the contrary, the said cotton is in fact, and will so prove to be upon delivery, greatly injured and damaged by reason of bad stowage and other acts, omissions, negligence, want of care and attention on the part of the master and owners of the said vessel, or their servants in this behalf, and that such damages do and will greatly exceed the freight and primage upon the said cotton, and
99 will amount, in the belief and opinion of the claimants, to a sum exceeding $5,000 over and above the freight and primage aforesaid.

Seventh. That these claimants have been injured by the non-delivery of the said cotton pursuant to the agreement aforesaid, and have sustained damage thereby, which the owner of said brig is liable to pay, and that they have requested the master and agents of said vessel to deliver said cotton, and to adjust and settle with them the damages aforesaid, but such requests have been declined.

Eighth. That all and singular the premises are true,
100 wherefore the respondents pray that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

OWEN, BETTS & VOSE,
Proc's for Resp's.

(*Endorsed:*)

U. S. District Court. 12. 64. A quantity of cotton, said to contain 269 bales, and 9 bags of wool, ads. John Clifton. Respondents' answer. Filed Jan'y 24, 1855.

To the Honorable Samuel R. Betts, Judge of the District
101 Court of the United States for the southern district of New York:

The answer of John Clifton, owner of the brig "Water Witch," her tackle, &c., to the libel of John H. Brower and Benjamin B. Blydenburgh, respectfully shows:

First. This respondent admits the matters stated in the first article of the libel, except that he denies that the ownership of said brig Water Witch was unknown to the libellants.

Second. This respondent denies the statements in the second article of the libel, and respondent alleges that the said
102 contract mentioned in the libel did not, nor could in any wise bind the said vessel, nor was the same authorized or assented to, and, as this respondent alleges, the said agreement, as he is informed, expired.

Third. This respondent denies the matters stated in the third article of the libel.

Fourth. Respondent denies the statements in the fourth article of the libel.

Fifth. This respondent also denies the matters stated in the third article of the libel.

Sixth. That respondent denies the matters stated in the
103 sixth article of the libel.

Seventh. That all and singular the premises herein stated are true.

Wherefore this respondent prays that this honorable court would be pleased to pronounce the claim of the libellants aforesaid, and to order, adjudge, and decree that the libel herein be dismissed with costs, or for such relief as may be just.

Sworn to before me this day of 1855.

CH'S DONOHUE,
Cl'm'ts' Proc'r.

W. R. BEEBE,
Advocate.

(*Endorsed:*)

U. S. District Court. The brig Water Witch, her tackle,
106 &c., ads. John H. Brower et al. Copy. Answer. Chas. Donohue, cl'm'ts' proc'r.

Ex'd. Rec'd Jan'y 30, '55. Ent.

To Owen, Betts & Vose.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

101½ The replication of John H. Brower and Benjamin B. Blydenburgh to the answer of owners of the brig "Water Witch," alleges that the said libellants will ever maintain and prove their said libel to be true, certain, and sufficient, and that the said answer of the said defendants is uncertain, untrue, and insufficient, and they humbly pray as in and by their said libel they have already prayed.

OWEN, BETTS & VOSE,
Lib'lts' Proctors.

To CHAS. DONOHUE, Esq.,
Cl'mts' Proct's.

Endorsed: 12. 58. U. S. District Court. John H. Brower and al. vs. Brig Water Witch, &c. Replication. Filed De-
102½ cember 26, 1854.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the southern district of New York:

The replication of William Henry Sheldon to the answer of owners of the brig "Water Witch," alleges that the said libellant will aver, maintain and prove his said libel to be true, certain, and sufficient, and that the said answer of the said defendants is uncertain, untrue, and insufficient, and he humbly prays as in and by his said libel he has already prayed.

OWEN, BETTS & VOSE,
Lib'lts' Proct's.

To CHAS. DONOHUE, Esq.,
Cl'mts' Proct's.

103½ Endorsed: 12. 59. U. S. District Court. William H. Sheldon vs. Brig Water Witch, &c. Replication. Filed December 26, 1854.

U. S. District Court.

JOHN H. BROWER & al.
vs.
BRIG WATER WITCH, &c.

We hereby consent that Owen & Vose be substituted in our place as proctors for the libellants in the above entitled action.

Dated July 10, 1855.

OWEN, BETTS & VOSE,
Lib'ts' Proct's.

At a stated term of the district court of the United States for the southern district of New York, held at the City Hall in the
105 city of New York, on the 11th day of July, 1855. Present, Hon. Samuel R. Betts, district judge.

JOHN H. BROWER & als.
vs.
THE BRIG WATER WITCH, &c.

On reading and filing the consent of Owen, Betts & Vose, libellant's proctors, and on their motion, it is ordered that Owen & Vose be, and they hereby are, substituted in the place of Owen, Betts & Vose as proctors for the libellants in the above entitled action.

Endorsed: 12. 58. U. S. District Court. John H. Brower and al. vs. The Brig Water Witch, &c. Order and consent for
106 substitution. Owen & Vose, lib'ts' proct's. Filed July 11, 1855.

U. S. District Court.

A QUANTITY OF COTTON
ads.
JOHN CLIFTON.

We hereby consent that Owen & Vose be substituted in our place as proctors for the claimants in the above entitled action.

Dated July 10, 1855.

OWEN, BETTS & VOSE,
Claim'ts' Proct's.

At a stated term of the district court of the United States for the southern district of New York, held at the City Hall in the
108 city of New York, on the 11th day of July, 1855.
Present, the Hon. Samuel R. Betts, district judge.

A QUANTITY OF COTTON
ads.
JOHN CLIFTON.

On reading and filing the consent of Owen, Betts & Vose, claimants' proctors, and on their motion, it is ordered that Owen & Vose be, and they hereby are, substituted in the place of Owen, Betts & Vose, as proctors for the claimants in the above entitled action.

Endorsed: 12. 64. U. S. District Court. A quantity of cotton ads. John Clifton. Order and consent of substitution.
109 Owen & Vose, cl'mts' proct's. Filed July 11, 1855.

U. S. District Court.

WILLIAM H. SHELDON
vs.
THE BRIG WATER WITCH, &c.

We hereby consent that Owen & Vose be substituted in our place as proctors for the libellants in the above entitled
104½ action.

Dated July 10, 1855.

OWEN, BETTS & VOSE,
Lib'lts' Proct's.

At a stated term of the district court of the United States for the southern district of New York, held at the City Hall in the city of New York, on the 11th day of July, 1855.

Present, Hon. Samuel R. Betts, district judge.

WILLIAM H. SHELDON
vs.
THE BRIG WATER WITCH, &c.

On reading and filing the consent of Owen, Betts & Vose, libellant's proctors, and on their motion, it is ordered that Owen
107 & Vose be, and they are hereby, substituted in the place of Owen, Betts & Vose as proctors for the libellant in the above entitled action.

Endorsed: U. S. District Court. 12. 59. William H. Sheldon and al. vs. Brig Water Witch, &c. Order and consent for substitution. Owen & Vose, libell'ts' proct's. Filed July 11, 1855.

U. S. District Court.

JOHN H. BROWER and al.
vs.
THE BRIG WATER WITCH, &c. } 12. 58.

WILLIAM H. SHELDON
vs.
THE BRIG WATER WITCH, &c. } 12. 59.

A QUANTITY OF COTTON, said to contain 269 bales, and 9 bags of wool,
ads.
JOHN CLIFTON. } 12. 64.

It is hereby consented that a commission issue in the first above entitled action, addressed to Powell, of the firm of Powell & Bald-

win, and , of Indianola, Texas, as commissioners to examine W. H. Armstrong, A. C. Pierpont, H. W. Henry,
110 Jacob H. Saunders, J. T. Olney, T. K. Fallon, R. M. Forbes, and such other persons as may be produced as witnesses on behalf of John H. Brower and al., and William H. Sheldon, parties to the above entitled actions, upon interrogatories and cross interrogatories to be annexed to such commission; and that the depositions so taken may be read in evidence on behalf of the said Brower and Sheldon, with like effect as if taken under a commission regularly issued in each of the said actions; and that the commission may be returned to Owen, Betts & Vose, proc-
111 tors, and need not be filed, but may remain in their possession, a copy thereof being furnished to C. Donohue.

New York, Feb. 22d, 1855.

BEEBE & DONOHUE,
For Vessel.

Endorsed: U. S. District Court. John H. Brower and al. vs. The Brig Water Witch, &c. William H. Sheldon vs. the same. A quantity of cotton, &c., ads. John Clifton. Stipulation.

At a stated term of the district court of the United States for the southern district of New York, held at the City Hall in the
112 city of New York, on the 22d day of March, 1855.

Present, Hon. Samuel R. Betts, district judge.

JOHN H. BROWER and al. vs. THE BRIG WATER WITCH, &c.	12. 58.
WILLIAM H. SHELDON vs. THE BRIG WATER WITCH, &c.	12. 59.
A QUANTITY OF COTTON, said to contain 269 bales, and 9 bags of wool, ads. JOHN CLIFTON.	12. 64.

On reading and filing the consent of Beebe & Donohue, esqs., proctors for the claimant in the first two above entitled actions, and for the libellant in the third above entitled action, and on motion of Owen, Betts & Vose, esqs., proctors for the libellants in the first two actions aforesaid, and for the claimant in the third action aforesaid, it is ordered that a commission issue in the
113 first above entitled action, addressed to Powell, of Powell & Baldwin, and , of Indianola, in the State of Texas, as commissioners, to examine W. H. Armstrong, A. C. Pierpont, H. W. Henry, Jacob H. Saunders, J. T.

Olney, T. K. Fallon, R. M. Forbes, and such other persons as may be produced, as witnesses on behalf of the libellants in the first two above actions, and the claimant in the third above action, upon interrogatories and cross-interrogatories to be annexed
114 to such commission; and that the depositions taken under such commission may be read in evidence on behalf of the libellants in the first two above actions, and the claimant in the third above action, with like effect as if taken under a commission regularly issued in each of the said actions. That such commission and the depositions thereunder taken need not be returned to the clerk of this court, nor filed with him, but may be returned by mail or private hand to Owen, Betts & Vose, proctors,
115 at No. 72 Wall street, in the city of New York, and may remain in their possession, and may be opened by them, or either of them, on two days' written notice to Beebee & Donohue, proctors; a copy thereof to be furnished to said Beebe & Donohue, proctors, &c., within a reasonable time thereafter.

Endorsed: 12. 58. 59. 64. U. S. District Court. John H. Brower and al. vs. The Brig Water Witch, &c. Consent and order for commission. Three suits. Owen, Betts & Vose, libellants' proctors. Filed March 22d, 1855.

At a stated term of the district court of the United States
116 of America for the southern district of New York, held at the City Hall, in the city of New York, on Friday, the eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable Samuel R. Betts, district judge.

JOHN CLIFTON
vs.
A QUANTITY OF COTTON, &c. } Vol. 12, page 64.

On filing the order of the district judge, and on motion of Messrs. Owen & Vose, proctors for the libellants, it is ordered that the deposition taken before G. W. Gurley, U. S. com'r, at
117 New Orleans, and received by mail this day, be opened and filed.

Filed the eleventh day of Jan'y, 1856.

District Court U. S., S. dis't of N. Y.—In Admiralty.

WILLIAM H. SHELDON } Mr. Owen.
vs.
THE BRIG WATER WITCH, &c., } Mr. Donohue.

JOHN H. BROWER & al. } Mr. Owen.
vs.
118 THE SAME. } Mr. Donohue.

JOHN CLIFTON vs. A QUANTITY OF COTTON. } Mr. Donohue. Mr. Owen.

2 first causes are for damages to cargo; the last for freight on same cargo of cotton.

No bill of lading for cargo was ever signed by the master.

Pleadings in all the causes read.

(See p. 124, '5, '6.) Deposition of Alva H. T. Simpson read.

It is admitted and agreed by the parties that the mate of the Water Witch has sworn in a deposition now lost or mislaid, (and for which this admission is substituted,) the same that the master of the Water Witch has sworn to in his depo'n, so far as
119 it relates to the condition of the cotton when received by the vessel, and the general character of the damage to it.

Messrs. Owen and Donohue read—

(See p. 130, '1.) 1. Deposition of John Coleman, cook and steward of the vessel.

(See p. 128, '9.) 2. Deposition of James Lawless.

3. The following depositions taken under commission:

(See p. 66, 67, 68.) Of Zenas K. Fallon.
(" 69 to 72.) Joseph H. Saunders.
(" 73 " 77.) Wm. H. Armstrong.
(" 77 " 84.) Robert M. Forbes.
(" 84 " 87.) H. W. Henry.
(" 87 " 90.) Alphonso C. Pierpont.

It is agreed and understood that all the testimony read or taken, or to be read or taken, on either side, shall be considered as read and taken, and have the same effect as though read and
120 taken in all the cases.

Adj'd to 11 a. m. to-morrow.

May 5th, 1856.

3 Causes continued.

Michael K. Wilson, called by Mr. Donohue for vessel: I have been a stevedore 9 or 10 years and am familiar with cotton coming from Texas; I know what is termed country damage; the customary condition of cotton from Lavaca is bad; I know
Obj'd to by Mr. Owen and adm'd. the brig Water Witch; I recollect when she was here in Aug't, 1854, and saw the load of cotton she had on board; the nature of the damage the cotton
121 had sustained was, I think, that the cotton came on board in bad and damaged condition; there was, aside from the floor tier, no sea damage to that cotton; the floor tier might have been a little damaged; the ropes were off and the bagging was a great deal of it gone; it was in the worst condition of any cargo I ever saw in New York; the bagging was rotten; the cotton that

came on deck was in full as good, if not better, as that below; the ropes and bagging could not have rotted off in six weeks in
122 the condition they were in when the cotton was unladen; vessels of the size of the Water Witch customarily bring cargo on deck from Texas and New Orleans; it is
Obj'd to & adm'd. customary, because such small vessels can't make anything without carrying a deck load.

Cross-examined: I did not discharge this cargo; Mr. Jerome discharged it; I saw it before it was discharged, and before any of it was discharged I went down into the hold after a part of it was discharged; the cotton was stowed on the flat and the edges
123 in the hold where they could get it; flat in the centre and two on the edges; I saw it in ends order; some set on end where they could not get screws to him; there was sand and boards for dunnage; sand (white) underneath, the boards over; this was over the whole hold amidships when I saw; I saw the vessel before she was discharged, and after, and every fifteen minutes while discharging; there was sand midships, and fore and aft, wherever it would go to trim the ship; can't tell the depth of the sand;
124 in the hold there were three tiers of cotton, one on the flat and 2 on the edge, and in some places one only on the head, and one on the flat; the lower tier of cotton was wet with sea water, as I suppose, a good deal wet; the second tier not wet; the first was, but did not come next the skin, as there was a board lay along there; I saw no cargo particularly except this cotton, which was all I was called on to look at; there were also some hides, but I did not look particularly to them.

125 The cargo on the deck was some on the flat, some on the edge, 2 end, and some on the end, and there was boards or wood under it; that on the flat was some wet on the under side; it was stowed all over the deck, flat in the centre and on the edge at the side to keep them from tumbling overboard. I mean by country damage that cotton is piled up there and is damaged by fresh water, which rots the ropes, and bands, and bagging, and makes them rotten, and break when taking the cotton on board;
126 fresh water rots bagging and ropes, and salt water don't; nineteen or 20 years ago was out and in Texas; can easily distinguish country damage from sea damage; no trouble about that; country damage relates to the bagging and ropes, and outside of the cotton, which is rotten and eaten out by the corners; in the cases I speak of, carrying cotton on deck, I do not know what the contract was between the parties; for aught I knew the charter party and bill of lading may have provided for its being carried on deck; I did not see this cotton after it was carried into the store-house; I was not called on a regular survey, but the
127 captain asked me two or three times to come down and look at it.

Re-direct: The cotton was stowed properly, just as well as other ships were stowed.

James E. Avery: I am a marine surveyor, and have been for about four years. I did not see the cotton in controversy. The condition of cotton coming from Indianola and Lavaca, when I have examined several cargoes, and have found it in bad condition—
what we call country damage, or rotten bagging ropes, and
128 outside, from exposure to rain and weather.

Cross: From Lavaca and Indianola, seen from 8 to 12 cargoes. Country damage is easily distinguished from sea damage. In the cases I referred to I did not see the bills of lading. The cotton in those cases might have been shipped expressly subject to country damage for ought I know. Country damage relates more to the bagging and ropes and outside of the cotton, which are rotten, and filled with sand or mud—some cases one and some
the other: I have never been to Port Lavaca, but to Galves-
129 ton, Mobile, &c., in this trade.

Capt. Joseph Tinkham: I am a marine surveyor, and have been for thirteen years; I have seen the Water Witch; was called to examine the deck load of her. It is very common for vessels of her size to carry a deck load of cotton. When they can get it, they always carry a deck load of cotton. There were about 100 bales on deck, or it was so said; it was in very bad condition; bagging much gone, and ropes mostly gone; saw very few ropes;
I know what country damage is; it is exposure to fresh
130 water, and the sun after. The defect in ropes and bagging
were, in my opinion, the result of country damage, and not of sea damage. It was stowed in the usual way on deck, on flat and edge, with dunnage of pieces of wood, 3 or 4 inches thick.

Cross: I surveyed the deck load only, not the whole cargo; I did not survey that under deck, and was not under deck at all. The cotton on deck was in a mass, and a great deal of appeared
to be in bulk. The cotton could not have been put on the
131 deck in that condition in bales; I did not observe whether
it was stowed on the flat or edge; it appeared to be in mass; I made a written report of the survey, and I can now produce it, the original. (The counsel for owner asks for it, and examines it, and declines to put it in evidence, and Mr. Donohue calls on him to do so, and objects because he is not required by the court to do it.)

Did not see how high the scuppers of the vessel were from
132 the deck; I think the cotton covered the entire deck from
the windlass to the companion-way; I saw the dunnage only next to the windlass—only saw it there. The plank shear on that vessel was 5, 6 or 7 inches high, probably. The scuppers are

holes through the plank shear to let the water off. Those scuppers are 2½ to 3 inches high, or in diameter.

The cotton, as I saw it, could not have been loaded on deck in that condition. Cotton that has sustained country damage is required to be handled with more care. But country damage is not
133 always perceptible, and therefore they do not always handle it more carefully. Cotton with country damage like this would not be so likely to be injured under deck as when on deck.

In the cases I refer to I know that in some cases there was bills of lading for carrying on deck, and in some cases there was not. Masters sometimes carry on deck under a bill of lading for under deck.

(Obj'd to by Mr. Donohue.) Cotton on deck pays less freight than under deck always.

(Obj'd to by Mr. Donohue.) Cotton on deck cannot be
134 insured at the same rate as under deck; charge double premium at least.

It is not the subject of general average when on deck.

I did not see the cotton when the ship first arrived; but when I saw the cotton, there was no covering on it. If there had been no covering on, the crew performed their deck work on the cotton necessarily. That would tend to break open and mutilate bales which had sustained country damage. If there had been boards laid on it, I think the boards would have protected it, unless it was exposed a long time. If a tempestuous passage, more exposed to injury.

135 The ordinary length of a passage from Lavaca to New York is 20 or 25 days; a passage from the middle of June to middle of August would be a long passage; at that time of year are subject to calm weather; and winds in Aug't or Sept.

A deck load in such a long passage would receive damage from spray even if covered, and more if not covered. The hot sun on the ropes and bagging, after being wet by fresh water, would rot rapidly; wetting by sea water would not have much effect. If water
136 got between the bales on the voyage, a good deal of water would remain in the cotton, and increase the injury to it. If they shipped water, it would thus injure the cargo more or less; water shipped on board would be more or less absorbed; but if the bagging and ropes were perfect, and the cargo highly dunnaged, much of it would run off. The best stowage on deck is on the edge. The edge resists the water better than the flat. The edge is a little ovalling, while the flat is flat. The oval form
137 helps the water to run off. I did not observe how high the deck was from the water-line.

Re-direct: All deck loads are exposed to the difficulties and damages I have mentioned. They are all incident to do it. My opinion was, that the damage was the continuance and increase of

the country damage. Cotton country damaged continues to be more damaged when on ship.

Re-cross: In such a vessel as the Water Witch the capt. stows on the edge end or flat, as he thinks best. If stowed on the flat, it is more likely to be injured if water gets in than when
138 stowed on the edge or end. It is very common to carry the deck covered with cotton as fully as this was, only more so. Sometimes have two or three tiers of cotton on deck. This, I think, had but one.

Re-direct: It would not be good stowage to have an open space in the hold. It must be stowed full to prevent its rolling about. The more compact the better the stowage; and to make it as compact as possible, it is sometimes necessary to stow on the flat and some on the edge. It is a good precaution to put sails over
139 the cotton, and it is frequently done.

Cross-ex'd: Sails put over it would protect it some in regard to the men's walking over it, but not so much as boards. Sails, in some respects, would be better than boards, and in others not so good.

Thomas A. Jerome: I am a stevedore; I have been in that business ab't 6 yrs.; previous to which I was a harbor-master of this port; I knew the Water Witch.

(Obj'd to by Mr. Owen.) It is customary and usual for vessels of her size to carry deck loads of cotton.

140 I know but little of the condition of cotton coming from Lavaca and Indianola; I know the distinction between country damage and sea damage; I saw the cotton on the Water Witch; it had not bagging and ropes enough on it to hold it together to discharge it; I discharged the cargo; it seemed to me it had been exposed to the weather and rains, for what bagging there was on was bleached; it appeared to be injured, and was what is usually called country damage; it was some stowed on the
141 edge, some on the flat, and some on the end on deck. There was wood under it for dunnage. In my judgment it was well stowed, and as cotton is usually stowed on deck.

Cross-ex'd: There was no wood dunnage between the bales on deck. No other dunnage between the bales. The dunnage on deck was sticks of wood laid on the deck—sticks 3 to 4 inches high, and laid under the bales; it was not stowed on boards on deck; I think stowed on wood dunnage; my gang discharged the entire cargo; the dunnage on the deck lay mostly athwart ships, I think;
142 the whole deck, or very nearly it, was covered; it was stowed from the foremast back to the house; the carters had to do the work on the top of the cotton; I think there were boards put on the cotton, fore and aft, to walk on; I am not quite positive, but I think there were, and that we put the boards on the wharf to put the loose cotton; the cotton on deck was not much broken

up until we undertook to raise them up; in the condition they were in then, they might possibly have been laden on board from
143 a lighter, without being broken more than they were, if they put strings enough on to hold it; the more you handle country damaged cotton the worse it grows. The deck had but one tier of cotton; I think some was on the end and some on the edges; I think between 50 and 65 bales on deck; I think the capt. said 64, but I may be mistaken; of this I think there was scarcely a bale of it, or in the hold, that would bear its own weight as we usually handle it. Before we commenced handling it, I
144 think only two or three bales of the deck load were broken up; the country damage I refer to, refers to the condition of the ropes and bagging; I do not know what damage it had sustained inside of the bales. That stowed under deck was stowed as Mr. Wilson described it, so as to get the most in, and in the best way for that purpose; I don't know whether it was screwed in, but I judged it was, from its condition on breaking it out; the cotton in the ground tier appeared to have been wet;
145 there had been water in the hold; the two upper tiers were not wet at all, I think; the ground tier was wet, by water being in the hold; the whole of it had the appearance, as to bagging and ropes, that it had on deck; I can't tell how much it was wet; it was wet up a foot on the flat; I should judge by the marks, water had been in the hold; when we began to break out, the appearance of the bales was very much as usual; can't say all
146 the bales were then whole. I first agreed to take it out by the bale, but couldn't do it, and finished the job by days' work. When we began to break it out, the cotton seemed to be still in whole bales until we began to take hold of them. If in the condition I found it, it could not have been loaded on to the lighter and then on to the ship in bales as it was. It had been on the ship in hot weather, and its condition had grown much worse during the voyage. The bales, except the lower tier, ap-
147 peared to be dry; they did not appear to have been wet on ship-board; if cotton could be landed on a wharf on to a lighter, and then transferred from the lighter to the ship and into the hold, I should say it might have been wet before it was loaded, and been growing worse all the time it was on ship-board. The Water Witch had very good capacity under deck for a vessel of her size; don't know her tonnage; vessel not loaded very deep; was cotton loaded. I think this was screwed in; if the cotton had been pressed and then
148 wet, it might swell, so as to give the appearance of having been put in with screws; there was no difference in the condition of the cotton on deck and in the hold, taken generally; all about alike. It is not customary to put dunnage between the bales; never saw any stowed in that way; think make it worse to put

Obj. to by Mr. D.

dunnage between the bales. The lower tier would have been equally wet if laid on the edges, making little difference in that respect, whether on edge or flat, as some surface would be
149 wet; it is good stowage to stow your hold full.

Re-direct: I think the flat of the bale not softer and more liable to receive water than the edge; I don't know how the layers of cotton are put in the bale; never saw one packed. Dunnage between the bales would let in air and allow it to dry; stow fruit in that way, but not cotton. If cotton on deck had been wet, it would perhaps dry out on the voyage, and perhaps get wet again, while drying would produce heat.

William Thompson: I am a marine surveyor; I have been
150 such about ten years, and previous to that was 13 years inspector of an insurance office. I know the brig Water Witch; Capt. Tinkham and myself were on the same survey. It is customary to bring cotton on deck from the southern ports—from the Gulf port and to Maryland. I saw the cotton and surveyed it; some on the wharf and some on the deck. I know what country damage is; the bags of this were in a very bad state; the ropes and baggage were so rotten that there was scarcely a bale whole. I think it was country damage.

151 Cross-ex'd: I did not count the bales surveyed; think I saw from 60 to 70 bales or more. Only surveyed the deck load; hatches had not then been opened; part of the cotton was then on deck and part on the wharf. My belief is, if the whole had been moved it would all be in bulk. The ropes and bagging were all off as soon as you tried to move it; perhaps half of all was in bulk. The cotton was changed in color—red, brown, and green, and mouldy—and this *all* I think was all country damage.
152 The heat and fresh water makes these stains; mud won't make it; mud won't work in much. There is hardly a cargo that comes from Mexico in which there is not more or less of country damage. I was a ship-master for over 30 years; was ten years in the Savannah trade to New York. Cargo on deck is not considered as under deck. Does not pay the same freight. (Obj. to by Mr. D.)

When vessels bring deck cargo on deck it is part of the
153 duty of the master to see that his bill of lading specifies that it is to be brought on deck; and if he does not, he makes himself liable beyond doubt; it is a good stowage to stow cotton on the deck.

Re-direct: Such a vessel is not full until she has a deck load; in such cases it would be specified in bills of lading or a charter party, that she must carry a deck load; when we speak of capacity of a vessel, if a low-deck vessel, it includes her deck load; and if a high deck, or double deck, what is under deck.

William B. Orne: I am a seaman; have been 40 years at

154 sea; I am now a marine surveyor, and have been for 5 years; made a survey on board the Water Witch; vessels of that size customarily carry cotton on deck as part of a cotton cargo; all carry more or less cotton on deck, if they can get it. Know diff'ce between country damage and sea damage; I surveyed the cargo of the Water Witch; it was all country damage; my survey was confined to below decks, but I saw her deck load also.

Cross-ex'd: The size of the Water Witch I don't recollect,
155 but I think 180 to 200 tons, custom-house measurement; she would carry that; perhaps all; ⅓ of the cargo below deck was broken out when we surveyed; more than that, as some parts of the ground tier were visible; found it all wet from sweat and water; all more or less sweaty. The ground tier of the vessel was wet up about 2 feet on the bales with salt water; that water at that season of the year would wet all the tiers with sweat, and they were so wet;
156 that ground tier, I don't remember about the country damage to that; I don't remember making but one survey; the cotton amidships was then broken out, so I could see the ground tier, and part of the siding tiers were taken away; as well as I can remember there was one board for dunnage under the ground tier; I don't recollect about dunnage between the skin of the vessel and the bales of cotton. The cotton ag'st the skin on the sides was wet, but it was all wet from the sweat; all of it appeared to me
157 to be more or less wet by sweat and by water; I don't remember seeing any other cargo; I don't remember whether the ceiling of the vessel was caulked; it is not common to caulk the ceiling; the water blows through often between the ceiling, and does very much damage when the vessel rolls; I don't know whether this was centre-board vessel or not; I think we reported this damage as all country damage; we saw from the rotten
Obj'n to. state of the bagging and ropes, that it was country damage; the ropes and bagging, I do not recollect whether they were
158 there or not; that cargo was no doubt stowed with screws; but I don't recollect about that.

(The cotton in the condition I found it could not have been loaded on a lighter, and then transferred to the vessel and stowed with screws. This is admitted by Mr. Donohue.)

When I was in the hold, don't remember that I saw any cotton there in bulk; I did not observe the cotton on deck as to its stowage or dunnage.

Mr. Donohue offers in evidence the charter party between owner and a charterer.

Objected to by Mr. Owen, and admitted subject to obj'n. Marked A., N. K. H.

159 Charter dated 29th March, 1854, made in Boston by John Clifton, owner and agent of Water Witch, and Cochran and Hall of New Orleans, by their agents.

Mr. Donohue offers to produce the capt.'s protest if the other party will consent to use it, but declines to let the party see it before he so consents.

Wit's called by Mr. Owen:

James W. Dunlop: I know the Water Witch, at the time of the arrival of that vessel with the cotton, was in the employ of Sheldon, the libellant, that house and its predecessors had been
160 largely engaged in receiving cotton for 6 or 7 years. Certain unsigned bills of lading were sent to the house of Shel-
Obj. to by Mr. D. don by Forbes, and by Baldridge, Sparks & Co. They appeared by the bills of lading and by advices to be the shippers of the cotton. Our house made advances upon that cargo. These advances were made on that shipped by Forbes; were paid to Thomas D. Johnson, a merchant at Sequina: he was the owner of that cargo so far as we knew; to S. N. Swenson, E. Ennis
161 & Co., McKeen & Hardiman; that is as many as I recollect for whom Forbes shipped. These men lived in the interior (except Forbes), and all this was shipped through Forbes; these various owners all advised us of the shipment; Thomas D. Johnson not at the time, but afterwards; we advanced for Forbes in some cases for his charges, or generally; the bills of lading will show; all these owners know this suit has been commenced; is being defended.

This cotton in dispute was 45 bales, shipped by Baldridge, Sparks & Co., and the residue by Forbes.

This bill of lading was signed by Cleveland, but I have
162 not got it in court. The brig Water Witch delivered the cargo, or a part of it, to us, on its arrival, and addressed our house as consignees of it on the arrival.

The bill of freight was made out and rendered to our house. The bill was sent to our house, and payment requested before the discharge of the cargo. The cotton of Baldridge, Sparks & Co. belonged to, or was shipped for ac. of Clark, L. Owen & Co. They advised us of that shipment—that is, Clark, Owen & Co.,
163 and we made advances on it to them. No part of the shipments on which we had not made some advances. Clark, L. Owen & Co. has knowledge of the existence of this litigation.

I saw the cotton before it was discharged. It appeared to have some country damage on it, about the average of Texas cottons.

All Texas cotton usually has more or less country damage; country damage is produced by exposure to rain—being immersed in fresh water.

The cotton on deck was not broken up when I first saw it. Part of that cotton had apparently been exposed without shelter;
164 part of it appeared not to have sustained country damage; should say fully one-half of it was free from country damage.

The other that was not country damaged, was part of it badly injured; I judged by the manner it was stowed on deck, and the injury it received there.

I observed how it was stowed on deck. It was on flats, two and three high; on sides do., and a few on the ends; nothing over it when I saw it.

I saw it so soon as the vessel got to the wharf, or the day it got there; but previously to seeing it, I had sent a steamer to
165 take cotton in bulk off the deck, at the request of the capt. The vessel was quarantined on ac. of the condition of the cotton and the smell. I believe there were some hides on board. The hides were below; she was not allowed to discharge at a wharf in the city, unless the cotton in bulk on her deck was taken off before she came to the wharf.

Cotton from Texas is always in such a condition, that we expect to have more or less picking from it on every consignment.
166 If cotton is country damaged, there is an entry of it on the bill of lading. The question whether it can be shipped depends upon the extent of country damage. Many bales cannot be shipped. Of the cotton under deck the bales were generally well put up, and in quite as good order as the majority of Texas cottons, except the damage it had sustained on the vessel. I think about 40 to 60 bales of the whole of the cargo came out in bulk, and has not been receipted as in bales.

167 We have receipted in bulk, and I presume it is in bulk, presuming that the vessel has delivered all she had rec'd.

(Obj'd to by Mr. D.) I knew that at that time the under-deck was 1 to 1¼ cent freight; unusually high freights; higher than I had ever before known.

(Obj'd to by Mr. D.) The difference in charge for under-deck freight over that of under-deck is ab't 100 pr. cent., under-deck being double under-deck freight.

Our house have chartered vessels for the trade in cotton from Texas. If we charter a vessel for Texas, we have no use of the deck unless so expressly agreed in the charter. If we have
168 a right to use the deck it is specially mentioned.

A vessel with 60 days' passage between here and Lavaca, a deck load of cotton would be injured very much by the sailors walking over it.

It would be very unusual not to be injured.

(Obj'd to.) Insurance on deck freight on her would be 3 times the under-deck premium.

The deck freight is warranted free from particular average.

Consignor takes all risk except total loss, and in case of jettison the under-deck cargo does not contribute in general average.

169 Had this cotton ex'd after it was put into the warehouse by persons conversant with Texas cotton, viz: Wm. Wildey,

Peter Carroll and Robert Dunlap. They met there to look at the Water Witch's cotton. It was all over floor of warehouse, and I saw these men ex'g it there.

This cotton was not country damaged; was damaged I think $20 pr. bale of sea damage on the whole 202 bales consigned to Sheldon.

Browers' consignment was damaged about the same in the average.

Cross-ex'd: I call sea damage salt water damage on board
170 the vessel. The sound value of one of these bales of cotton was $50 on the average. I can't tell what proportion of the bales were sea damaged. I think the lower tier below deck and the cargo on deck were damaged by salt water, and salt water and rain, and that this was about half the cargo. They were wet in the lower tier with salt water about 18 inches up; part wet in about half; part ¼, and part less.

The most damaged bale of all, I should think, was $30 a
171 bale or more; that I think was the most damaged, and all the way down to $5. All of that cotton was not country damaged; the ropes on those bales, I think, were about the usual size, half or ¾ of an inch in diameter. Those ropes on the deck load had generally rotted off; may have been rotted off same below; in some instances on the deck load, the bagging had so rotted off as to be no protection; don't know as it was so below; was not below when they were getting it out from the hold; did
172 not look into the hold. I was 8 or 10 times on the wharf while they were getting out. I should judge all that was on deck, was more or less injured by salt water. When I first saw it, only the bulk of 8 or 10 bales off; looking at the cotton, I cannot make any distinction as to the top or bottom or sides of the cotton being the best.

The facts about the consignments to us, and advances on the goods about which I have spoken, rest on communication with us by letter.

173 My business now is one of the firm of Sheldon, Lawson & Co.; and at that time I was clerk for Mr. Henry Sheldon.

Cross-ex'd: One house insured this cotton, and paid the premium. The first I saw of the cotton was after the vessel arrived at the wharf.

Re-direct: It is not customary for all vessels of the class of the Water Witch to bring deck loads from Texas.

The sch'r A. B. Moore brought nearly all her cargo to us. I thought the freight was 1⅛ or 1¼, but it might be $1\frac{31}{100}$.
174 The A. B. Moore's capt. took charge of her. She brought a deck load of something. The brig Catharine Rodgers, I recollect she came from Matagorda bay, and her cargo was wrecked and damaged; cotton wrecked in Colorado river; it had been sub-

merged in the water; a good deal of that came in bulk; I can't now recollect of any small vessel like the Water Witch, that came from Texas without a deck load; the Catharine Rodgers had a deck load.

Re-cross: The A. B. Moore's bill of lading mentioned that part of her cargo was on deck; I can't recollect ab't the Catha-
175 rine Rodgers; but presume it did. The A. B. Moore came from R. M. Forbes, and the Catharine Roders from some one else, ab't the time of the Water Witch's arrival.

Adj'd to 11 a. m., to-morrow.

May 6, 11 a. m., cause continued.

John A. Parker: I am at present vice pr. of the Great Western Ins. Co. Before that time I was an adjuster of losses and appraiser of damages to cargoes of vessels; I held that position for 8½ years, and during that time had much to do with the ex'n of cargoes—a good many hundred claims a year of various kinds.
176 I am acq'd with cotton, and the manner in which it is put up in bales; these bales are filled from the edge or narrow side; it is put in by layers. The effect of that in regard to shedding of water is, that the water will work into the sides and ends alike in proportion to the surface exposed, and less into the edges. I recollect examining cotton of the cargo of the Water Witch, at the request of Sheldon & Co., in whose name it was insured; I went down on the part of the Insurance Co.; the lot insured was
177 202 bales, part of the cargo. The cotton I ex'd was part on deck, part on the wharf, and part in the hold; part of the cotton in the hold was broken out, and I ex'd at the hatches; but I think I did not go down into the hold. The cotton was very wet, and very badly damaged, and altogether in very bad order. The main damage to the cotton was from sea-water, and water in the vessel; sea-water injuries the cotton; it spoils the ma-
178 chinery with which it is to be worked; I judged the cotton was badly stowed, for there was a lack of dunnage in the hold, not suff't dunnage to protect it from the water on the bottom and sides of the vessel; there should be dunnage at the sides to protect the cotton from the sides of the vessel. The water which gets in between the planking and ceiling will blow through by the motion of the vessel. It is not the best kind of stowage to stow the first tier of cotton on the flat on the bottom of the ves-
179 sel, but it is frequently done, I believe; it is not good stowage to stow cotton on the flat, on sand in the hold of a vessel; sand in the bottom when the ship makes water, is likely to choke the pumps. It is considered an unsafe kind of ballast for the vessel; cotton should be stowed edgewise on deck for the purpose of shedding water; if stowed flat on deck, I regard it as bad stowage; with a full deck load of cotton, it injures the cotton more or less, for the men do their work on deck over it; it

180 should be covered with boards or something of the kind. I can't remember how deeply the vessel was laden; I recollect she was rather a small vessel; a vessel of 150 tons register would carry 350 bales of cotton under her decks if full built; some would carry much more than others. The cotton was also country damaged. Country damage is the effect of rain and exposure to the weather; always superficial or mostly so. Country damage does not prevent its being in shipping order. Coast-
181 wise the country damage is never regarded in shipping it to Europe; we take the country damage off always. We open and strip the damaged cotton off, and rebale it to ship abroad.

Cross-ex'd: When country damage has proceeded so far as to rot the ropes and bagging, so that the bales come all open, it is not in shipping condition. What I mean by its being in shipping order is, that it is not so damaged but that the ropes and bagging will hold it safely. The cotton coming from Texas is not, so far as I know, generally in bad order. Sound ropes ex-
182 posed to wet and heat will rot in six weeks. In a confined atmosphere, they will rot in that time from salt water. In less than that time, the bagging would rot off in a confined hold, even when wet from salt water. If put in wet, the tendency to rot in a confined atmosphere would be very great. If wet with fresh water, and the cotton had absorbed all that it could, the ropes and bags would rot in the six weeks I have mentioned; might so rot off in six weeks if the bales looked fair when put in. I
183 think I was twice aboard to examine this cotton, but that I did not go into the hold. There was suff't broken out, so that I could see the floor under the hatch, so we could see under the cotton, and was under it. I think I went alone first, and then Capt. Story and Capt. Crane, since deceased, then went with me to examine. I have seen cotton on deck, stowed on the flat, but don't think it is customary. I look particularly to only damaged cargoes. I can't say what proportion of vessels which come have some of the cotton on deck stowed on the flat. Can't
184 give the names of any vessel which came with cotton on deck, and none of it stowed on the flat. There is more or less roundness to the edges of the bales, and the falling water would have more places to run between the bales. If necessary to get snug stowage, it would be necessary to stow part of it on the side. For the same purpose, it might be proper and necessary to fill out a tier to stow on the flat on the ground in the hold. To carry 350 bales on such a vessel as the Water Witch,
185 they should be in proper condition. If the bales were swollen and some burst, they would get in less into the hold. The usual way of stowing cargo is by jack-screws, putting it in by pressure. When the bale has broken and spread, can't use the screws so much. Cotton in bad order, so that it cannot

bear the screws on the bales, is not in a shipping condition. It is customary for vessels of the size of the Water Witch to carry a deck load of cotton with that cargo as I saw it on deck.
186 The cargo was in much worse order than usual. I do not know as I ever saw a cargo or a deck load so entirely bad as that was. With a rough, boisterous voyage, the deck load would suffer more or less from salt water. In that warm weather, the cotton would rot and be injured more than in cold weather. July and Aug't are part of what we term the hurricane months; and on account of greater risk, we exact a greater premium in all our insurances. The ports of Texas and Mexico are not speci-
187 ally excepted in the policy, but all ports of the Gulf are excepted, unless an add'l premium is paid. Cotton wet with salt water and further damaged, would still show the country damage in the staining of the outer edge of the damage. If the country damage had only extended to the bagging and the ropes, and there was nothing in the voyage, could not distinguish between the country and sea damage, if the country damage had not proceeded so far as as to discolor the cotton. Country damaged cotton, when the bag rots, is always stained on the outer
188 edges. There was a good deal of country damaged about this cotton; but I can't say whether or not the whole of it was more or less country damaged. That in the hold which I saw might have had a few bales sound. That *that* I saw was, I think, all wet. Some sound cotton, I understood, had been removed. I ascertained it had been wet by salt water by its being then wet; because if it had been wet by fresh water before shipping, it would then have been dry. If the bales had been submerged before shipment, and then put in a confined hold, it would not have
189 dried it; but if only wet so that the dry cotton would absorb the moisture, the cotton would not dry. But in that warm season, if the cotton had been wet before shipment, and the hatches battened down, it would sweat more or less. A great many of these bales were broken open, and part of the bales gone. This was so as to the greater part of them. The cotton was stained, and it was wet. It was stained apparently from country damage before it was shipped. The country damage stain was on
190 the surface, and was caused by the bales being wet and dried.

Re-direct: I know vessels bring deck loads. Deck cargo is never considered under deck. In the cases where vessels came with deck loads, I don't know but the charter-party and bills of lading always provided for it. (Obj. to.)

If there was sea-water came into the hold and wet the cargo, that, in very hot weather, would produce sweating, even if the bags went in dry. The sweating of the hold, I think, will rot bags faster than pure water. I imagine that cotton taken

191 from a wharf on to a lighter, and from the lighter to the Water Witch, and then loaded into the vessel with jack-screws, must have been in shipping condition. That kind of handling would seem to evidence that it was in good condition for shipping. (Obj'd to and adm'd.)

Breaking cargo out of the hold is done by using hooks, and that always more or less breaks the ropes and tears the bales. I have seen cases *were* the bags and ropes were broken when there was no country damage. This condition applies to cotton which has
192 rec'd damage, whether on shipboard or otherwise. Our Co. refused to pay the damage on this cotton.

Re-cross: If cotton was country damaged, its condition on coming out would very much depend on the mode of handling in shipping and unlading.

Capt. William W. Story: I have been master warden of the port of New York for 8 years. As such master warden, it has been my duty and practice to examine and survey vessels and cargo, whenever called on. I examined the cargo of the Water Witch. I was called on by Capt. Crane to go and examine her ground
193 tier, and I went and found that the bottom part of the bales stowed in the ground tier were wet with salt water from 9 to 12 inches up. This ground tier covered the floor of the vessel. There were 3 or 4 bales taken out before I got there, and I saw twenty or more taken up while I was there. It was dunnaged by boards. It was badly stowed, in my judgment. There was not suff'ct dunnage. The ground tier was stowed pretty much all on the flat. There was more offensive smell in the hold than that which usually proceeds from bilge-water. There were some hides there which had been wet.

194 Cross-examined: Boards are usual dunnage, but they are usually put high enough for the water to pass free. The dunnage under the boards ought to be four inches thick. Vessels are not more than half dunnaged as this was—not more than a quarter, I think. My attention is called to vessels whose cargoes are damaged. The object is to give the water a free passage. I was called by Capt. Crane, who was attached to the Astor Ins'ce Co. I saw some skins or hides in the hold. I went down in
195 the hold. I was there but once. Before I was port warden I had been to sea. It is customary for vessels of the size of the Water Witch to carry a deck load of proper cargo. The general term is "full and on" when a vessel is loaded to her capacity below and on deck. I would not consider her loaded to her capacity unless she had her deck load. Cotton is such a cargo as they carry part on deck. It is customary to carry on deck.

Re-direct: In cotton stowed on deck on the flat receiving more injury than when on the edge. Breaking out cargo with
196 hooks has a tendency to break the ropes and bagging, and

careless men can break them still more. Cotton that is rec'd from a wharf on to a lighter, and from the lighter on to the ship, and then stowed with jack-screws, would receive injury more or less in handling. It always does receive injury more or less in handling, especially since hooks have come into use.

Re-cross: It would be necessary sometimes to put cotton on the flat in order to make snug and tight stowage, and then it is proper stowage so to place it.

197 Peter Carroll: I am a mender of cotton—of the bales. I have been in that business ab't 23 years, in the city of New York. I carry on that business on my own ac., and have had men employed under me. I know what is and what is not "country damage." All damage occurring to cotton prior to shipment is called country damage. On ex'g bales of cotton here, I can very readily determine whether it is damaged by country damage or sea damage. Bagging and ropes become rotten after some little time from country damage.

198 I saw the cargo of the Water Witch; was not employed to mend it; I was employed to survey it, by Messrs. Brown and Sheldon, on Mr. Sheldon's requisition. The first I saw of it was at pier 11 or 12 East river, on the deck and on the wharf, part on each; I surveyed it afterwards in the store. Did not survey it at the pier, but saw its condition there. When I surveyed it it was in a store in Greenwich street; it was then in store. Robert Dunlap and Wm. Wilday assisted me in making that sur-

199 vey. I don't know where Mr. Wilday is. In the store we had a gang of men, and ex'd and turned every bale, and noted the damage on a sheet of paper as we went along. There was a report of that survey then made out and signed by us. This is the survey which we then made.

X by the other side: This is not my handwriting; it is not the paper on which we made out our statement. I compared this, with Mr. Dunlap, with the original statement. This was

The paper is admitted, if by consent, marked B. W. K.

200 H., and the wit. by consent states, that the statements contained in the paper is a correct report of what we found in our survey. It shows the damages as we estimated it on these various bales of cotton. The letters "U. D." on this paper mean under deck; "O. D." means on deck; "C. D." means country damage; "Good" means that the bales opposite to which it was marked were in good order, and not damaged at all. None of the bales not marked or noted "C. D." were country damaged to our knowledge. The damage other than the country damaged, appeared to have been caused by water. We found a part of

201 the cotton in bulk, which had no marks; 9 or 10 bales from the deck were in a condition to show the marks; on the other side of the wharf, there was a lot which had neither bagging or

rope, or marks, about it. I knew men were engaged on deck in tying up and securing the bales on deck, so that they could be taken off. Some of the bales appeared to have been injured by walking over them. It states on the survey that there were 81
202 bales without marks, and the reason of this that the marks were rotted off by the effect of water. I observed the cotton at first was in such a condition that when it laid in the vessel the bales could be ascertained or counted, but when moved the bagging and ropes were not sufficient to keep it together, but the bales fell to pieces on being handled.

The cotton I have described as damaged, and was described as in bad condition on the survey, was in so bad order that it could
203 not be made merchantable—that is, five-sixths of it could not have been; a few bales might have been fixed up and made merchantable. Damage which is country damaged, can be made merchantable; that is an every-day business. It is made merchantable. When it is damaged, but not badly, we cut the ropes and take off the bagging and all the damaged cotton, and rebale it, and put on the bagging and ropes nicely. This cotton I speak of was too much damaged; when the damage is 40 or 50 per cent. this can't be done. On this survey we marked the
204 per cent. damage as we estimated it. We found but a few bales which were country damaged; the rest of the damage was sea damage as I judged, for the cotton was still wet; it may have been with by both fresh and salt water. Country damage may be pretty severe, and the cotton yet come here in very good order, as we term it, if the bales are well roped.

Cross-ex'd: I call country damage when a bale is wet on the outside, and the outside is rotten. My impression then was, and
205 now is, that the 64 bales not marked "C. D." were not country damaged. It was our judg't then that but 18 bales there were country damaged, and the rest was wet, except that which was marked "good;" that was, when the bales were good, ropes good, and the cotton dry. This was marked dry. We did not know of our own knowledge how it was wet; we did not know how it was wet, except what we judged from looking at it; we knew it was wet. Those bales which were not marked country damaged, and which were wet, were not otherwise stained that I
206 recollect; I don't recollect that they were stained. I suppose we were 4 to 6 hours in examining this cotton and making the original statement. We determined whether it was under deck or over deck, by our knowing which was wet by bilge-water and which was wet by fresh water, and all we marked under deck was wet with bilge-water, as we supposed. The cotton we did not find wet all through the bale with bilge-water; we did not open it, to ascertain how far it was wet in. The stain on that we marked "U. D." was wet by bilge-water, was stained a

207 filthy dark yellow. Those which we marked as "on deck," we so marked because they had not the filthy smell of bilge-water on them; and those we marked "U. D." had the filthy smell of bilge-water on it. All the marks on this survey were on the bales when we examined them. I did know these bales came from the Water Witch. I saw them on board, and the smell of the hides was on them, so that I could ascertain their identity. The hides continued to smell on the whole of this cotton when
208 we ex'd it. I call country damage the exposure to wet before shipment, and perhaps dried, or perhaps not dried, before shipment. Some of these bales we ex'd had been roped on the deck of the vessel. This cotton could be dried, but not in the bales, as it was, without its rotting. Did not open the bales to see how far the rot extended in. The bales would have to be opened to dry it and put it in order.

Re-direct: I think all the cotton from the deck, as well as the rest, smelled from the hides; I think it was all impreg-
209 nated in consequence of the hides being so rotten they had to be shovelled out, and lay on the deck with the cotton. (Obj. to.)

Never saw a cargo of cotton landed in as bad condition as this was.

Re-cross: Not even when cargo was landed from stress of weather. I saw a portion of the hides on the deck, but did not see them discharged.

Edward Agan: I worked on the Water Witch in breaking out the ground tier, and roped the bales. There was a little gravel and stone under the ground tier, under the main hatch, but
210 none under the wings; there was no dunnage at all under that part of the cargo under the wings; nothing but the sand and gravel under the cargo amidships; no dunnage under the cargo except the gravel, &c.; there was sand and gravel under all that *that* laid amidships; it was stowed, some on the edge, and more on the flat; at the sides on the edge, three or four bales, and rest on the flat. Mr. Dillon employed me to go there to break out this cotton; he is a mender or repairer of cotton, to put it
211 in shipping order. The cotton I broke out was wet; all the bottom part of it was wet. I have worked in stowing cotton and other vessels. This cotton was not properly stowed.

Cross-examined: The reason was, because there was no boards or scantling under it; sometimes boards and sometimes scantling are used; would have been good stowage if proper dunnage had been used. I worked under Mr. Dillon's directions; I did not see Dillon there; his foreman was there, and I worked under the directions we got from his foreman, who was on board. I went
212 simply to get that tier out. We roped the cotton on the vessel for it to go ashore. Been 12 years in the business of

mending. The upper sides of the cotton looked damaged, like as if it had been wet and dried again; I saw some of the rest of the cotton, but did not take much notice of it; did not see any of the rest of it wet. The hides in the hold were wet. Part of the cargo was on the dock at the time and part on the deck. I do not know
how many days that cargo remained on the dock.

213 Michael Carmer: I worked on the Water Witch at the same time with the last wit's. I helped break out and rope the ground tier. There was no dunnage except sand under that ground tier; there was nothing under that part stowed in the wings that I saw; I think more than one inch of sand in the cotton, but I can't tell how much.

Cross-examined: I and the last wit's were sent there to rope that cotton. When I went there there had been a place at the main hatchway cleared down to the floor of the vessel. All the
214 cotton that was there needed roping, and could not be taken out without it; I can't say how many bags. I went to rope cotton which could not be taken up without roping.

By Court: The ground tier had not been moved before we went there. There was, I think, cotton under the main hatch when I went there, and that was part of what I called the ground tier.

Martin Murphy: I worked on the Water Witch with Agan. I helped to break out the ground tier, and rope the bales, so
215 they could get them up the hatch; the ground tier had not, I think, been moved before we began to break it up; the only dunnage under that tier was the sand, stone, and gravel, under the main hatch; it was wet and sloppy under the cotton, except at the hatch; the side of the rope which was up seemed to be sound, but the ropes were rotten on the under side; the bales were wet, some bales broke, and we put more ropes on, and there was no dunnage except near the hatch.

Cross-ex'd: Went there to rope cotton which could not
216 be moved without; when I went there there was 5 or 6 bales aft, that was not on the ground tier, that had been roped, and were to be hoisted up. I helped commence to rope the bales under the hatch, and under the hatch the floor was covered; I worked there until we had roped all the bales that needed it; the whole of this ground tier needed roping, and was roped by our Co. Did not notice Capt. Story there that I recollect; noticed two or three gentlemen came to the hatch and looked down,
217 but did not like to come down on ac. of the smell; a man perhaps might have come down and not noticed him.

Re-direct: The smell I speak of was from the rotten hides.

Robert Dunlop: I am a cartman at present; I have been a cartman for 20 years, and cart sugar, cotton, and almost every kind of goods and cotton cargoes; I know the character and condition of cotton in bales. I remember the Water Witch;

I carted her cargo, or a part of it; it was carted from pier 9, I think, to 55 Greenwich st., to Henry Sheldon & Co.'s
218 store; I did not see the cargo until it was on the dock; I saw it before it was begun to be carted away, all that came to Sheldon L. Brower & Co.; there was, I think, a little cotton that came on board that vessel which was consigned to another house; the condition of the cotton was very wet and bad; it appeared to have been damaged by exposure to wet on or under deck; I afterwards ex'd it in co. with Mr. Carroll and made the survey produced by Carroll; it was signed by me, and it is
219 in my handwriting, and we took a great deal of pains, and the statements of that survey I believe to be correct. I know what is called country damage, and can always distinguish it from sea damage; cotton, such as I have been in the habit of carting, which is country damaged, has sometimes as good an outward appearance as good cotton; cotton that is country damaged is sometimes so much damaged that it cannot be repaired, but generally it can be.

Cross-ex'd: This cotton I saw was wet; could judge how
220 it got wet, and in this way: a bale of cotton that comes on deck with water washing in it, the cotton on the lower side will run points down; if packed in the open field, and some quantity of water thrown on it, it would produce the same effect. In this case the under-deck cotton had a darker stain on it than the other; my recollection is only of a darker stain; looks like stain of dark dirty water; it was a darkish color, but can't precisely describe it; I think I can swear it was not a yellow or brown. I was in
221 the employ of no one when this cotton came here; I did Mr. Browers' carting. I am not a dealer in cotton; know nothing particular about its value. I distinguished by the appearance of cotton what I marked U. D. and O. D.; the one U. D. had darker stain and sweat of bilge-water, and the other had less smell, and was sweeter; the bales did not all smell of the hides, I think; I got at it by the difference in the color and smell and appearance of the bales.

Re-direct: Brower has large quantities of cotton coming to
222 him; for over twenty years I have had charge of his warehouse. I never saw a cargo of cotton in as bad order as this was.

Re-cross: I left Browers' employ ab't 5 days before the Water Witch arrived.

Albert Davidson: I am in the employ of J. H. Brower & Co. as clerk. I know we rec'd bills of lading of the Water Witch; but I never saw the vessel or the cargo. Those bills of lading came to J. H. Brower & Co. in the ordinary course of business. J.
223 H. Brower & Co. make advances on cotton, but I don't know as we advanced on this particular cotton, except charges. J. H. Brower & Co. insured it and paid the premium. The freight

bill for this cotton I know was sent to our house. I have it here. Produces it, marked C., N. K. H. (It is for ft. on 67 bales.) 67 bales were consigned to our house according to the bills of lading. These three bills of lading are the bills of lading of that cotton, which were sent to us; they are unsigned. These bills were
224 rec'd July 6, before the arrival of the brig, marked G. F. B., 1, 2, 3. I remember the sch'r A. B. Moore, which I think arrived a few days after the Water Witch. A portion of her cargo was consigned to our house, and bills of lading sent us. The cargo was shipped by R. M. Forbes; I have the bills here. The rate of freight in those bills is $1\frac{1}{4}$ cent, and under deck— $\frac{1}{16}$ of a cent on deck, that is.

Mr. Owen rests.

Mr. Donohue offers the test'y of witness under commis-
225 sion, which purports to have been taken on the part of respondents, and Mr. Owen objects, and it is excluded, and Mr. Donohue has exe'n noted; and adj'd to 11 to-morrow.

May 7, 1856, 11 a. m. Cause proceeds.

Mr. Donohue calls

David K. Dearborn: I am a shipping and comm'n merchant. We were consignees of the Catharine Rogers; she brought cotton. She came from Lavaca. There was no pretence of sea damage on that cotton. It is customary for small vessels to carry deck loads of cotton.

Cross-ex'd. It is customary for charter party or bills of
226 lading to express the fact of deck freight in such case, unless the master takes it at his own risk.

Re-direct: If the master is asked how much he can carry he will include his deck freight, and sometimes mentions what he can carry on deck, and what below, and sometimes not.

Re-cross. In general mercantile language the capacity of a vessel, or what she can carry, is what she can carry under deck. When they intend to go beyond that, they go beyond that and say on and under deck, using the two terms. We receive cot-
277 ton but not to a great extent; not much in the habit of it.

Re-direct: Full cargo means when "deck" is stricken out of printed charter party, a cargo on and under deck. The printed forms of charter party generally except the deck.

Re-cross: The vessels bringing cotton carry most under deck, but they generally take all they can get to carry, and carrry as deck fr't.

John T. M. Currier: I am a stevedore; I have been so about eight years, and have been in the habit of discharging cotton from Lavaca and Indianola; I discharge for a line which runs there. The cotton coming from there that I have discharged has never

228 been free from country damage. Small vessels of 150 tons always carry a deck load; about one-third of the cargo from that port—single-deck vessels.

Cross-ex'd: Country damage is to cotton which has been wet by rain, and which rots the bagging and ropes. Cotton that is country damaged is not considered in shipping order. All the cotton which comes from those ports at the South is not in right good shipping order. All the cotton from Mobile, Charleston, and Savannah, is not country damaged. They store the cotton.

229 There is a large am't of cotton which comes from the ports of Matagorda and Lavaca is country damaged. They do not store the cotton as they do in other ports. We sign bills of lading not accountable for roping, bagging, and weight, from those ports.

Thomas A. Jerome: There were boards over the sand on the cotton of the Water Witch up to the usual place at the bilge. Cotton wet on the outside, and then the bagging dried on the outside will frequently retain the wet in the cotton after the bagging was dry. This cotton was stowed in the ordinary and usual way of

230 stowing cotton on those voyages.

Cross-ex'd: I went below.

John Helms: I am attached to U. S. marshal's office. Have been to sea and had experience in stowing cotton, and seeing the way in which it is stowed. Good dunnaging for cotton in the coasting trade. We spread it all over the hold. We spread cotton right over the ballast without anything under it.

Cross-ex'd: It is about 20 years since I have been to sea. We had in the vessels I speak of stone ballast. The kelson in those vessels was in the neighborhood of a foot above the ceiling

231 where the garboard streak went on. The vessels I speak of were about 300 tons.

Silas P. Greenman: I am a captain of a vessel in the Matagorda trade, most of the time for 5 years. The general condition of Texas cotton is, that always more or less of it is damaged, broken bagging and cotton.

It is customary for small vessels to carry deck-load of cotton. They most always do.

Cross-ex'd: When they carry deck-load, they generally sign bills of lading on deck. In such cases a charter party would

232 show whether it was to be carried under deck or on and under deck. The damage in Texas cotton is to bagging and ropes, and I have seen it considerably damaged by laying in the prairie. We generally sign our bills of lading with a condition, "Not accountable for ropes, bagging or country damage." That is the usual language when the outside appearance of the cotton is not good. If it is in good order, we sign bills of lading

accordingly; when it has rec'd country damage, can always discover it. Am master of brig "Lavaca;" have been master
233 2 years; hardly ever bring cargo on deck in her, but do sometimes; that vessel does not always damage her cargo, more or less, at sea; she is 342 tons burthen.

Mr. John T. M. Currier, (again:) It is customary to stow cotton on the flat on the floor of the vessel—that is, on the ground tier—from these ports, when it is not compressed; when it is compressed, stow it on the edge; on the decks they stow on the edge, unless it is necessary to stow on the flat, to make it close solid stowage. Cotton comes from Lavaca and Matagorda is not com-
234 pressed.

Cross-ex'd: Cotton that is not compressed I would stow on the flat, because the ordinary vessels in that trade are not large enough to stow well on the edge—on edge and on border.

Re-direct: It is put on the flat for snug stowage. I discharged the A. B. Moore.

Peter Cregan: I am in the employ of Draper & Develin; I saw this cargo discharged of the Water Witch. The outside of the cargo next the bulwarks, skin of the deck load, was generally in better order than that which was inside. The same was
235 true of the outside of the pile, where open space run across the vessel.

Cross-ex'd: I don't remember positively whether this was stowed on the edge or not; I saw the deck-load at the wharf first and before any was discharged on to the wharf. This vessel had what I call a half poop or trunk deck or cabin.

Wilson, (again:) I saw this cargo, as before testified to. There was boards under the cotton; it was dunnaged with boards; under the boards there was white sand as high as the kelson,
236 along aft; amidships not so high; cotton was wet. Cotton that was wet and apparently dry on the outside, may be dry, and the inside may be destroyed and be like dry punk; be mouldy and rotton. Cotton wet and put out the hold will swell and burst the bagging and bands, and will sweat and all decay.

Cross-ex'd: The outside of the bale I speak of may look quite well, except when a hole has been made in it; not one bale of *of* 100 so bad as this.

Mr. Owen, again.

Mr. James W. Dunlop, (again:) This letter is dated La-
237 vaca, June 20, 1854. It was rec'd by our house in course of mail about 4th or 5th July. It was written by R. M. Forbes. The bills of lading therein referred to were enclosed in that letter.

I know the charges there mentioned have been paid to Forbes, either by payment of draft or crediting him in acc., when he is charged with general drafts. (Obj. to by Mr. Donohue.)

He has been credited with the am't in his acc., and our house received the cotton and acted on the advices contained in that
238 letter. We insured under those advices and p'd the premium. The bill of freight was presented to our firm, and we were called upon to pay the freight before the cargo was taken out of the vessel.

Cross-ex'd: I find by my mark on the letter that I credited the charges to Mr. Forbes; we replied to Mr. Forbes's letter: I think we also advised Forbes when the cotton arrived. I think it likely we have copies of all the letters; we generally keep copies.

Re-direct: We received by the brig Water Witch this bill of lading and the cotton therein mentioned, viz: 45 bales of
239 cotton, shipped by Baldridge, Sparks & Co., on board the Water Witch, to the order of Henry Sheldon & Co. That bill of lading was sent to our house by Baldridge, Sparks & Co.; the letter of advice is on the back of the bill of lading; the date of the bill of lading is 14th of June. This bill of lading is signed by H. B. Cleveland. Baldridge, Sparks & Co. do business at Powderhorn, near where the Water Witch lay to take in her cargo.

Part of this cotton came on deck, and part under deck,
240 (marked "A. F.," and adm'd subject to obj. by Mr. Donohue.) Baldridge, Sparks & Co. *valued* on us for the charges, and they were paid; these 45 bales were insured also by our house, and we paid the premium. In this bill of lading, words "Not accountable for ropes, torn bagging or country damage," are the usual words used in bills of lading from that port. (Letters to Brower and to Sheldon put in evidence, and marked A. H. and A. G., N. K. H.)

Mr. Owen admits that H. B. Cleveland was the agent of
241 Cochran & Hall, of N. Orleans, the persons named in the charter party.

Mr. Donohue argues the cause for claimants in 2 first cases, and for libellant in 3d suit.

Mr. Owen argues for libellants in first 2 cases, and for clm'ts in 3d suit.

Mr. Donohue, in reply.

Cur. adv. vult.

Endorsed: 12. 58. 59. 64. U. S. District Court. John H. Brower and al. vs. The brig Water Witch. William H. Sheldon
242 vs. The same. John Clifton vs. A quantity of Cotton. Judge Hall's Minutes of Testimony.

The President of the United States of America to Stirling T. Seawell and David J. Baldwin, of Indianola, Texas, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you a commissioner, and by these presents do give you, or either of you, full power and authority, diligently to ex-

amine upon their corporal oaths or affirmation, before you to be taken, and upon the interrogatories and cross-interrogatories hereunto annexed, W. H. Armstrong, A. C. Pierpont, H. W. Henry, Joseph H. Saunders, J. T. Olney, Z. K. Fallon,
243 and R. M. Forbes, as witnesses on the part of the libellants, in a certain cause now pending undetermined in the district court of the United States of America for the southern district of New York, wherein John H. Brower and Benjamin B. Blydenburgh are libellants, and the brig "Water Witch," her tackle, &c., John Clifton, claimant, is respondent.

And we further empower you, or either of you, to examine on the same behalf, and in like manner, any other person or persons who may be produced as witness before you; and we do hereby require you, or either of you, before whom such testimony
244 may be taken, to reduce the same to writing, and to close it up under your hands and seals, directed to Owen and Vose, esq., at No. 72 Wall street, in the city of New York, as soon as may be convenient, after the execution of this commission; and that you return the same, when executed as above directed, with the title of the cause endorsed on the envelope of the commission

Witness the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New
245 York, at the city of New York, this day of , in the year of our Lord one thousand eight hundred and fifty-five, and of our independence the seventy-ninth.

GEO. F. BETTS,
Clerk of the District Court of the

OWEN & VOSE,
Libellant's Proctors.

The execution of this commission appears in certain schedules hereto annexed.

9 June, A. D. 1855.

STIRLING T. SEAWELL,
D. J. BALDWIN,
Comm'rs.

Directions for Executing the Commission.

The persons to whom such commission shall be directed, or any one of them, unless otherwise expressly directed therein, shall execute the same as follows:

246 1. They, or any one of them, shall publicly administer an oath to the witnesses named in the commission, that the answer given by such witnesses to the interrogatories proposed to them, shall be the truth, the whole truth, and nothing but the truth.

2. They shall cause the examination of each witness to be reduced to writing, and to be subscribed by him and certified by such of the commissioners as are present at the taking of the same.

3. If any exhibits are produced and proved before them, they shall be annexed to the depositions to which they relate,
247 and shall, in like manner, be subscribed by the witness proving the same, and shall be certified by the commissioners.

4. The commissioners shall subscribe their names to each sheet of the depositions taken by them; they shall annex all the depositions and exhibits of the commission, upon which their return shall be endorsed; and they shall close them up under their seals, and shall address the same, when so closed, to the clerk of the court from which the commission issued, or to the clerk of the county in which the venue shall be laid, as shall have
248 been directed on the commission at his place of residence.

5. If there is a direction on the commission to return the same by mail, they shall immediately deposit the packet, so directed, in the nearest post office.

6. If there be a direction on the commission to return the same by an agent of the party who sued out the same, the packet so directed shall be delivered to such agent.

The above is an extract from the revised statutes of the State of New York, (4th ed.,) vol. 2, page 639, relating to the taking of testimony out of the State.

249 This commission, when executed, is to be returned by mail, or private hand, to Owen & Vose, esqs., at No. 72 Wall street, in the city of New York.

The execution of this commission appears in certain schedules hereto annexed.

STIRLING T. SEAWELL,
D. J. BALDWIN,
Commissioners.

Instructions to Commissioners.

Annexed to the commission is an extract from the statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary
250 to be attended to by the commissioners, they are requested to observe the following more ample instructions:

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by , the commissioner named therein.

III. The acting commissioner will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"You do swear that the answers which shall be given
251 by you to the interrogatories proposed to you shall be the truth, the whole truth, and nothing but the truth. So help you God."

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "You do swear in the presence of the ever living God;" and while so swearing, he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall
252 be permitted to make his affirmation in the following form: "You do solemnly, sincerely, and truly declare and affirm," omitting the words, "so help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of witnesses, produced, sworn, (or affirmed) and examined, the day of , in the year one thousand eight hundred and , at , under and by virtue of a commission issued out of the , in a certain cause therein depending and at issue between , defendant, as follows:

A. B., of (insert his place of residence and occupation) aged years and upwards, being duly and publicly sworn (or
253 affirmed) pursuant to the directions hereto annexed, and examined on the part of the , doth depose and say as follows: First. To the first interrogatory he saith, &c. [Insert the witness's answer.] Second. To the second interrogatory he saith, &c., and so on throughout.

If he cannot answer, let him say that he knoweth not.

V. If there be any cross-interrogatories, the witness will go on thus:

First. To the first cross-interrogatory, he saith, &c, and so on, throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

254 Examination taken, reduced to writing, and by the witness subscribed and sworn to, this day of 18 , before

, *Commissioner.*

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be endorsed by the acting commissioners, in this manner:

"At the execution of a commission for the examination of witnesses, between , defendant , this paper writing was produced and shown to (insert the witness's name) and by him deposed unto at the time of his examination, before

255 , *Commissioner.*

VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto:

"You do solemnly swear that you will truly and faithfully interpret the oath and interrogatories to be administered to , a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

256 Let the depositions be subscribed by the interpreter, as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of , 18 , before

, *Commissioner.*

X. The commissioner will make return on the back of the commission by endorsement, thus:

"The execution of this commission appears in certain schedules hereunto annexed."

, *Commissioner.*

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and ex-

257 hibits, must be folded into a packet and bound with tape. The acting commissioners are to set their seals at the several meetings or crossings of the tape, endorse their names on the outside, and direct it thus:

To Owen & Vose, esquires, at No. 72 Wall street, New York.

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission, specifying the manner in which it is to be returned, then it must either

258 be delivered to the court by one of the acting commissioners

personally, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath, before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest
259 post office, he making the following endorsement thereon:

"Deposited in the post-office, at , this day of , 18 , by me.

, *Commissioner.*"

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following endorsement:

"Deposited in the letter-bag of , now lying at , and bound for the port of New York, this day of , 18 , by me.

, *Commissioner.*"

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

260 If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon Owen & Vose, esqs., at No. 72 Wall street, who will direct him as to its delivery.

U. S. District Court.

Interrogatories to be administered to W. H. Armstrong, A. C. Pierpont, H. W. Henry, Joseph H. Saunders, J. T. Olney, Z. K. Fulton, and R. M. Forbes, witnesses to be produced, sworn, and examined on the part of the libellants in a certain cause pending in the district court of the United States for the
261 southern district of New York, wherein John H. Brower and others are libellants, and the brig Water Witch, her tackle, &c., is respondent, under and by virtue of the commission which is hereto annexed.

First interrogatory. What is your name, age, and residence, and do you know the parties to this action, or either, and which of them? Have you any interest in the event of this action?

Second interrogatory. What is your business, and how long have you been so engaged in business? Do you know the brig Water Witch? Was she at the port of Lavacca in June,
262 1854? Where did she lie, and where was she bound at that

time? Was she at Lavaca; if not, how far from there did she lie? Was the place where she lay the usual place for vessels of her size to lie while receiving cargo? Were there any other vessels lying there at that time; if so, where did they belong, and where were they bound to?

Third interrogatory. Did you, at the time before stated, know J. Mitchell of that place; if so, how long had you known him, and what was his business? Declare fully.

263 Had he any; and if so, what connection with the Water Witch? Have you ever seen the said J. Mitchell write, and are you acquainted with his handwriting? If so, look at the paper now shown to you, and which is hereto annexed, marked A, and say if the name "J. Mitchell," thereto subscribed, is in his proper handwriting? In whose writing is the body of that paper? Is the signature of R. M. Forbes thereto affixed the genuine signature of that person? Did you see the paper A signed by the parties, or either and which of them?

264 Fourth interrogatory. Where did the Water Witch lie at the time the contract marked A was signed? Who was master of her? If you answer that A. H. T. Simpson was master, then state whether he was present, or knew that such contract had been executed on behalf of the brig? If you say he was present or knew of the same, then state whether he objected thereto, and how and in what way, and to whom such objection, if any, was made?

Fifth interrogatory. To whom was the brig consigned on her arrival at Lavaca? Who acted as her agent or ship's hus-

265 band? Who paid her bills while in port? Who cleared her at the custom-house? Declare fully to the best of your knowledge and belief.

Sixth interrogatory. Before the contract A was signed had the master of the brig, or any person on his behalf, and who in particular, solicited freight of R. M. Forbes for his vessel? Was such solicitation with his knowledge or approbation?

Seventh interrogatory. Did R. M. Forbes ship any cargo on board of the Water Witch? If yea, how much and of what did such cargo consist? If you say it consisted of cotton, then state

266 how many bales were shipped in all. How was it sent to the brig? If you say it was sent down by lighters, then state who owned or was the master of such lighters; and how many lighter loads were sent.

Eighth interrogatory. Where was the cotton taken from when it was sent aboard of the lighter? What was the condition of the bales and ropes at that time; were they in good or bad condition? What was the condition of the cotton at the time? State fully all you know upon these subjects. How was the weather

267 during the time of such shipment? Did the lighter man give receipts for the cotton taken aboard of the lighter? If

so, produce the same, and annex them to your deposition hereto. What was the condition of the cotton as described in such receipts? If you say it is described as in good order, then state if it is usual to give receipts for cargo as being in good condition when it is not so. If any of the said receipts qualify the condition of any of such cotton, then state what particular bales by marks, and how
268 many of them, such qualification applied, and what the qualification was meant, or understood to mean, in relation to such?

Ninth interrogatory. How was the cotton taken aboard the brig from the lighter? Was it or not at that time in good condition? Were any objections made to its condition at that time? Where was the master of the brig when it came aboard of his vessel? Did he know that R. M. Forbes was the shipper thereof? Did the master of the brig know at that time that it was shipped under the agreement A before referred to? Declare fully what you know upon the subject.

269 Tenth interrogatory. Who was to pay for lightering the cotton to the brig? Was it to be paid by the vessel or by R. M. Forbes? State particularly, and state also who in fact did pay it? Who disbursed the brig while at that port? If you should say that I. Champion had anything to do with the matter, then state in what capacity he acted; whether as the agent or consignee, or as the charterer of the brig. If you should say he was the charterer, then state how you know that fact, and state
270 also whether or not the above named J. Mitchell was in any way, and how, connected with him in said charter, or authorized or employed by him to procure freight for the brig, or to make the contract contained in the schedule A, and whether he knew of such agreement. Declare fully.

Eleventh interrogatory. Was there any other agreement in writing relating to the carriage and delivery of the cotton except that contained in schedule A? If so, produce and annex the same to your deposition. Was the agreement A in any way, and how, altered or modified? Declare fully according to the best of
271 your knowledge and belief. Was there any and what agreement that the cotton, or any part of it, might be carried on deck? Was there at that time any usage or custom at Lavaca for vessels to carry cotton on deck at the risk of the shipper, except in cases where there was a special agreement to that effect with the shipper? Where should the cotton in the present case have been carried, upon or under deck?

Twelfth interrogatory. Is the freight upon cargo carried on deck the same or less than that carried under deck? What was
272 the freight in this case? Was it that of "under deck" or "deck cargo?" Did R. M. Forbes consent that this cargo, or any of it, might be carried on deck? What was the relative

difference between the rate of deck freight and under deck freight at that time?

Thirteenth interrogatory. After the cargo had been shipped on board, was the master, or other person for him, and who, requested to sign the bills of lading therefor? Who drew up the bills of lading? Were they drawn according to the agreement of affreightment marked A, and according to the receipts given therefor upon delivery on board? Were they signed by the master, or any person on his behalf? Was any protest made on account of such refusal to sign? Annex, if you can, the bills of lading so tendered; if you cannot, state why, and what has become of the same. To whom was the cotton and cargo consigned in New York? Did the vessel sail without bills of lading being signed?

273

Fourteenth interrogatory. John Coleman, cook and steward on board of a brig, in a deposition taken before a commissioner in New York, has testified in regard to the cotton in question that he "never saw cotton in the condition the cargo of the Water Witch was in when shipped; the ropes and bagging was rotten; also cotton on the outside was rotten; had been apparently exposed to weather for a long time; some of it dirty and muddy; it would scarcely bear rolling when we took it on board, and was wet; you could wring the water out of some. You could scarcely see any marks on it—some marks." State whether the testimony of Coleman above quoted is correct; and if not, then state wherein it is false or untrue. Declare fully, as if particularly interrogated.

274

275

Last interrogatory. Do you know or can you state any other matter or thing which will tend to the benefit of J. H. Brower & Co. in the above action? If so, declare the same fully as if particularly interrogated thereto.

OWEN, BETTS & VOSE,
Libellant's Proctors.

Settled by consent, subject to all legal objections.
CHAS. DONOHUE,
Proctor for Lib't and Clm'ts.

Endorsed: U. S. District Court. John H. Brower & al. vs. The Brig Water Witch, &c. Interrogatories.

Schedule A.

Mem.—Agreement made and entered into this ninth day of May, A. D. 1854, between J. Mitchell, of the one part, and R. M. Forbes of the other part.

276

The said J. Mitchell contracts and binds himself to take on board the brig "Water Witch" 300 to 400 bales of cotton, according to

the capacity of the vessel; the cotton to be delivered at Lavaca, on board the lighter furnished by the s'd Mitchell, as it is wanted, and to be placed by him on ship-board, free of charge to the s'd R. M. Forbes, and taken to New York, at the rate of 1¼
277 cents per pound, and primage as customary.

And the s'd R. M. Forbes agrees to deliver the said quantity of cotton as it is required.

It is also understood and agreed, that if, at the expiration of ten days from this date, the s'd vessel shall not be ready to receive cargo, then this agreement shall be void, or subject to be renewed at the pleasure of the contracting parties.

Signed in duplicate, the day and year above written.

J. MITCHELL,
R. M. FORBES.

At the execution of a commission for the examination of witnesses, between John H. Brower and Benjamin B. Blydenburgh, libellants, vs. brig "Water Witch," her tackle, &c., John Clifton, claimant, respondent, this paper writing was produced, and sworn to by Zenas K. Fulton, J. H. Saunders, W. H. Armstrong, R. M. Forbes, H. W. Henry, H. C. Pierpont, J. Mitchell, Joseph H. Baldridge, H. B. Cleveland, Henry Beaumont, and by them deposed to in such manner as is set out
278 in their depositions hereto annexed, at the times of their examinations, respectively, before Stirling J. Seawell and D. J. Baldwin, commissioners.

Z. K. Fulton.
J. H. Saunders.
W. H. Armstrong.
R. M. Forbes.
H. W. Henry, jr.
H. C. Pierpont.
J. Mitchell.
Jos. H. Baldridge.
H. B. Cleveland.
Henry Beaumont.

U. S. District Court.

JOHN CLIFTON
vs.
A QUANTITY OF COTTON, &c.

JOHN H. BROWER and al.
vs.
THE BRIG WATER WITCH, &c.

WILLIAM H. SHELDON
vs.
THE BRIG WATER WITCH.

First cross-interrogatory. What was your business, and where did you reside, during the time inquired of you in the second interrogatory? Did you ever personally see the brig, or go on board of her at any time, while lying at, in, or near Port Lavaca? Do

you know, of your own knowledge, where said vessel
280 was bound at that time? Do you know the size of the vessel, of your own knowledge; if so, what was her size? If you say any other vessels were lying there, give their names.

Second. Do you know of your own knowledge what the connection of J. Mitchell with the vessel was? If you say you do, state how you obtained such knowledge. When and where did you see the paper referred to in the second interrogatory signed, or when did you first see it after being signed? State the date and
281 place. State what was the business of R. M. Forbes and J. Mitchell at that time, and what connection each of them had, if any, with the cotton or other articles mentioned in the paper, or was any particular cotton then spoken of?

Third. Did you see the Water Witch when paper "A" was signed, or had you previously seen her; and if so, where and when? State fully. When and where did you first see A. H. T. Simpson, and how did you know he was master? If you undertake to state he knew of any such paper being signed, state how you know
282 he did; what, if anything, he said; and who was then present.

Fourth. If you state to whom the brig was consigned, state how you know that. If you state any one acted as her agent, state how he so acted, and who he acted with.

Fifth. If you answer in the affirmative to the sixth direct interrogatory, state who, on the capt.'s behalf, the date he so solicited, and what was said and who was present; and if you answer as to his knowledge or approbation, do you know of your own
283 knowledge it was so? If you say you do, state how you so know it.

Sixth. Did you see any, and if so what, quantity of cotton go on board said vessel, who put the same on board, how was it so put on board, and in what quantities and when; each date; who owned each lot and part of the cotton; did not Mr. Forbes get the carrying of said cotton from others? State fully; and state if you know from where said cotton and each part that you know of came from to the vessel, where had it been lying, and how long had it been so
284 lying, and what protection had it? Of what crop was the cotton, if you know? How do you know the names of the lighters, or who owned it?

Seventh. Did you particularly examine the cotton at the place where it had been lying, and what part of it did you so examine, and how often and how long before the removal? How had the weather been during the time it had been lying where it was taken from? Did you see the receipts called for in the eighth interrogatory given, and each of them, and when were they so given
285 or signed; was it not after a difficulty with the capt. about the condition of the cotton, or some other cause? Had not

receipts been made out for the vessel or capt. to sign, and had he not refused?

Eighth. Do you know the matters in the ninth interrogatory of your own knowledge? State how you so know it. Do you mean to swear that the cotton was not in bad condition? Did not the captain refuse to sign the receipts? Is it not usual for the master of the vessel to sign receipts when he receives it; why did
286 he not do it in this case? Was not a protest made on the subject by the agent of the cotton, because the capt. would not sign bills of lading or receipts?

Ninth. Do you know of your own knowledge who was to pay for the lightering of the cotton, and how do you know this? If you say it was paid by the vessel, do you or not mean J. Mitchell? Do you know who disbursed the brig, of your own knowledge? State your own knowledge, and what it is, as also, what was the
287 character of Mr. J. Champion. If you state he was a charterer, was such charter in writing, or did you learn that to be so when you learned the fact of being so charterer?

Tenth. What was your relation, if any, to such paper as is referred to in the eleventh interrogatory, to the cotton here; who were the parties, and what were they, and what were their connections with the cotton; and do you know all this of your own knowledge, and how do you so know it? Did you not see and was it
288 not plain that a part of said cotton was stowed, and would be carried on deck?

Eleventh. Do you know of your own knowledge, in regard to the matters you answer to the twelfth interrogatory? If so, state fully your knowledge, and how you got it.

Twelfth. Were you present when any bills of lading were tendered or offered to the capt.? Was not more than one set or number of bills of lading tendered to him? How do you know to whom the cotton was consigned?

Thirteenth. What interest have you in the cotton referred to in the suit, and what had you at any time; what connex-
289 ion, if any, had you with the cotton or any part of it, or either of the parties or persons connected with the cotton, or interested therein? State fully; and if you had at any time, or have now any interest in the cotton or any part of it, or the proceeds of it, or any expenses therein, state so.

Fourteenth. Do you know any other matter or thing material or important to the claimant and owners of the brig? Declare the same as fully as if fully interrogated thereto.

CHAS. DONOHUE,
Proctor for Lib'lt and Cl'mt.

290 Settled by consent, subject to all legal objections.

OWEN, BETTS & VOSE,
Lib's' Proctor.

Endorsed: 12. 58. U. S. District Court. John Clifton vs. A quantity of cotton, &c. Cross-interrogatories. Chas. Donohue, proct'r for libl't.

Depositions of witnesses produced, sworn, and affirmed and examined the thirtieth day of May, A. D. one thousand eight hundred and fifty-five, at the office of Sewell & Baldwin, in the city of Indianola, Calhoun County, Texas, under and by virtue of a commission issued out of the district court of the United
291 States of America for the southern district of New York, in a certain cause therein pending, and at issue between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig "Water Witch," her tackle, &c., John Clifton claimant, is respondent, taken before Stirling T. Seawell, commissioner, (David J. Baldwin, esq., com'r, being duly notified of the place and time when, but did not attend, for reason that he was called by business to the town of Matagorda, Matagorda county,) as follows:

1st. Zenas K. Fulton, a resident of Lavaca, Calhoun county, Texas, aged about sixty years and upwards, being duly and
292 publicly sworn pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows, viz:

In answer to interrogatory 1st. My name is Zenas K. Fulton; I reside in the city of Lavaca, Calhoun county, Texas; I have been introduced to the plaintiff Blydenburgh, but have never seen plaintiff Brower; know him by reputation as a merchant in New York city. I have no acquaintance whatever with the defendant Clifton, and I have no acquaintance with the brig "Water Witch." I have no interest in this suit or its result whatever.

293 To the second interrogatory he sayeth: I am a merchant, and have been engaged as such for ten years. One Mitchell, who represented himself to be agent for the brig "Water Witch," applied to me for freight to New York, about the month of June, 1854; he wished me to pay lighterage to where he said the vessel lay, near Indianola. I refused to give her freight on such terms. She was not at Port Lavaca; and I only knew where she lay, or where bound, by the representations of s'd Mitchell above
294 referred to. He afterwards told me Mr. Forbes had given him freight; she was not at Lavaca, and I do not know how far from there she did lie exactly; perhaps from twelve to fifteen miles; I do not know exactly where she did lie; I do know what was her draft of water; it usually depends upon the size of the vessel where she receives her freight; I do not know whether any other vessels were lying near the "Water Witch" or not.

To interrog. 3, witness answers: I was acquainted with
295 J. Mitchell, who resided at Indianola, same county; I had known him only a few months, and only knew him in ca-

pacity of ship agent. I do not know of any connexion between s'd Mitchell and the Water Witch, except such as is shown in my answer to second interrogatory. He represented himself to be agent, and applied to me for freight for s'd vessel; I never saw him write that I remember, and do not know his handwriting; I cannot identify the handwriting of the body of the paper referred to in the interrogatory; the signature of R. M. Forbes
296 thereto annexed is his genuine signature; I did not see it signed by the parties, and never saw it before now.

To interrog. 4, witness answers: I know nothing of any of the matters inquired of in this interrogatory.

To interrog. 5th, witness answers: The brig "Water Witch" was not at Lavaca at the time inquired of, and had no consignee there. I know nothing whatever of the other facts here inquired of, except as to the (asserted) agency of s'd Mitchell, before testified to.

To interrogatory 6th, witness answers: I know nothing
297 of the facts inquired of in this interrogatory, except as to the statement of Mitchell mentioned in my answer to interrog. second, that Mr. Forbes had given him freight.

To interrog. 7th, witness answers: I know nothing of the facts inquired of in the interrogatory.

To interrog. 8th, witness answers: I do not know anything of the facts inquired of in this interrogatory, but will say it is not customary in my business to give or take receipts for cotton as in good order, when it is not so.

In answer to 9th interrogatory witness sayeth: I do not know anything whatever about the matters here inquired of.

298 In answer to the 10th interrogatory witness saith: I know nothing whatever of the facts inquired of in this interrogatory.

In answer to the 11th interrogatory witness sayeth: I know nothing of the facts in this interrogatory inquired of except as to the custom. I say there was no custom or usage, so far as I know, at Lavaca, at the time inquired of, for vessels to carry cotton on deck at the risk of the shipper, unless expressly agreed upon. I will say that ship owners and masters have offered to take
299 cotton on deck for me at a less rate of freight than that paid on cotton shipped under deck, but always refused to ship on such terms, but I have had my cotton carried on deck at the same rates of freights as in the hold; but the vessel in all cases assuming the extra risk.

In answer to the 12th interrogatory witness sayeth: Ship-masters have offered to take freight for me on deck at a less rate as stated in my answer to the 11th interrogatory; but I never shipped so, and do not know the difference customary, if any there be.

300 To the other facts inquired of in this interrogatory I know nothing, and therefore cannot answer.

To the t13h interrogatory witness sayeth: I do not know anything whatever in relation to the matters herein inquired of.

To the 14th interrogatory witness sayeth: I do not know anything whatever in relation to the facts in this interrogatory inquired of.

To the last interrogatory witness sayeth: I do not know any more of the matter.

And in answer to the cross-interrogatories witness answers as follows:

To the 1st cross-interrogatory witness sayeth: My busi-
301 ness is that of a merchant, as set out in my answers to interrogatory in chief, and residence *is* before stated; I never was on the brig, and never saw her; I know nothing as to where she lay or where bound, except as represented by s'd Mitchell; I do not know anything about the size of the vessel; I know nothing about other vessels lying there.

To 2d cross-interrogatory he sayeth: I only know of Mitchell's connection with the brig "Water Witch" by his own representations as before said; I did not see the paper referred to
302 signed; no paper is referred to in the second interrogatory. The paper referred to the 3d interrogatory I never saw until shown to me this day, and here, when testifying. The business of R. M. Forbes at the time inquired of was that of a forwarding and commission merchant. Mitchell's business, so far as I knew it, is before stated in my answer to the 3d interrogatory in chief; know nothing of the connection of Forbes or Mitchell with the vessel or cotton spoken of.

To 3d cross-interrog. witness sayeth: I do not know any-
303 thing of the facts here inquired of; I neither saw the Water Witch, nor Simpson, and know nothing of Simpson whatever.

To 4th cross-interrog. witness sayeth: I know nothing whatever of the matters herein inquired of, except the (asserted) agency of Mitchell's before testified to.

To the 5th cross-interrog. witness sayeth: I do not know if Mitchell acted by the authority of the captain or no; he only applied to me. I do not know whether the captain approved of his doing so or not; I do not remember if any one was present or not; it was in my own counting-room.

304 To 6th cross interrogatory witness sayeth: I did not see the cotton go on board, and know nothing about the matters in this X interrog. inquired of.

To the 7th X interrogatory witness sayeth: I never saw the cotton. Do not know where it had been lying, or anything about it, or any receipts, or disputes about receipts.

To the 8th X interrogatory witness sayeth: I do not anything of the matters herein inquired of.

To the 9th X interrog. witness sayeth: I know nothing about Champion, or any other matters inquired of here.

305 To the 10th cross-interrogatory witness sayeth: I do not know anything about the matters in this inquired of.

To the 11th X interrog. witness sayeth: The facts I answer to in the 12th interrog. in chief I answer of my own knowledge. To the other matters I know nothing.

To the 12th X interrog. witness sayeth: I never saw any bills of lading whatever.

To the thirteenth X interrog. witness sayeth: I have no interest in the cotton, nor any connection ar concern with it or its proceeds.

To the 14th X interrog. witness says: I know nothing
306 more of the matter.

Z. K. FULTON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, the 30th day of May, A. D. 1855, before

STIRLING J. SEAWELL,
Commissioner.

Joseph H. Saunders, a resident of the city of Lavaca, county and State afores'd, being duly sworn, according to law, on the part of libellants, on his corporal oath, sayeth as follows:

In answer to first interrogatory he sayeth: My name is Joseph H. Saunders; I reside at port Lavaca, in the county of Calhoun, and State of Texas; am aged twenty-six years; I have no
307 personal acquaintance with any of the parties; I have no interest in the event of this action.

To the 2d interrogatory he sayeth: My business is that of ship agent and auctioneer, and have been engaged in that business about one year and a half. I have seen the brig "Water Witch," but was never aboard of her that I remember of. She was not at the port of Lavaca in June, 1854; I saw her at Powder Horn wharf, in the town of Indianola, and it was understood she
308 was bound for New York; she was near about fourteen miles from Lavaca. It is usual for vessels drawing too much water to go to port Lavaca to receive cargo at an anchorage called "The Pocket," some mile or two above Powder Horn wharf. I do not know what was the draft of the "Water Witch." I do not now remember what other vessels were at s'd wharf, or where bound, if any others were there.

To the third interrogatory witness answers: I knew J. Mitchell for a few weeks previous to the time inquired of; I under-
309 stood his business to be that of ship agent; I did not know except by report his connection with the "Water Witch;" I understood at the time he was such agent. I do not know J. Mitchell's handwriting; I don't recognise the handwriting of the body of the paper shown me. I recognise the signature of R. M.

Forbes to s'd paper as his genuine signature; I did not see the paper signed by either of the parties.

To the fourth interrog'y: I do not know where she was
310 at the date of the instrument A, and I do not know who was master of her. I do not know whether he was present when the paper A was signed or no.

To the fifth interrogatory he sayeth: The brig never arrived at Lavaca; she had no consignee in Lavaca. Mr. Mitchell acted as her agent, as I understood at the time; I do not know who paid her bills in port, nor who clared her.

To the sixth interrogatory: I do not know of my own knowledge whether freight was solicited of Mr. Forbes for the brig or no.

To the seventh interrogatory he answers: I saw cotton
311 going abroad of a lighter at Mr. Forbes's wharf, and was informed the cotton was going to the "Water Witch" under a contract with and between Mr. Forbes and Mr. Mitchell; I do not know how many bales were shipped in all; it was sent down by lighters, but I do not know who owned the lighter, nor how many loads were taken; I think, according to the best of my present recollection, that the lighter was the "Saint Patrick," from Matagorda.

To the 8th interrogatory he sayeth: I only saw the cot-
312 ton, so far as I know, on the wharf; I did not particularly remark any extraordinary condition of the cotton one way or the other; I do not remember what was the condition of the weather at the time; I do not know if he gave any receipts; I know nothing about any receipts, but know that it is not usual to give receipts for cotton "in good order" when it is not so; I know that it is very generally the case that masters of vessels and mates are very particular about giving receipts for cotton, and gener-
313 ally note every defect in ropes or bagging, or general condition of the cotton.

To the 9th interrogatory he sayeth: I know nothing of the cotton, how it was taken aboard or its condition, or any other fact inquired of in this interrogatory.

To the 10th interrogatory he says: As to the matters in this interrogatory, I only know that s'd Mitchell acted as agent of the vessel.

To the 11th interrogatory he says: It is customary for vessels to take freight on deck at a less price than under deck, if at
314 the risk of the shipper; if taken on deck, at the risk of the vessel and owners, the same freight is charged as is charged for "under deck." I only know where the cotton in this instance should have been carried by reference to the paper marked A; my understanding of that paper is from the usual practice in affreightments, that the cotton should have been carried under deck. As to the other matters in this interrogatory I have no knowledge.

To the 12th interrog. he sayeth: When a bill of lading is given for cotton "on deck," it is usual for it to be at the risk of
315 the shipper, and carried at less freight when a clean bill of lading is given; it is all taken at the same price, whether on or under deck, and the extra risk of such as is on deck is at the risk of the vessel. I do not know how it should be carried in this case, except by reference to the paper A; I know that the usual freight on cotton at the time to New York, under deck, was one cent and a quarter per pound. I never knew
316 Mr. Forbes to consent that any of this cotton should be carried on deck. I do not remember if I ever saw Mr. Mitchell and Mr. Forbes together at the time of making the contract. The cotton shipped on deck was usually taken at ⅛ less than under deck, if at risk of shipper.

To the 13th interrogatory he says: I do not know whether or not the master of the brig was ever asked to sign bills of lading; but I do know that J. Mitchell for him as agent of the vessel was asked to sign bills of lading; I asked him to sign the
317 bills of lading by written authority from Mr. Forbes; I do not remember who drew up the bills of lading; I first offered him clean bills of lading, with the usual exceptions at the port of Lavaca, being in substance, "vessel not accountable for torn bagging, missing ropes or old country damage." He refused to sign them; I then showing Mr. Mitchell my written authority to do so from Mr. Forbes, offered him an additional exception on the bills of lading in these words: "not accountable for loss in weight,
318 and one bale in dispute." Mr. Mitchell and Mr. H. B. Cleveland than consulted and agreed to sign the bills of lading; Mr. Mitchell told me to go over to his office and insert the last mentioned exceptions in the bills of lading, and he would come and sign them; I went to his office, and was about endorsing such exceptions in the bills of lading, when Mr. Mitchell came over and said that they had concluded not to sign the bills of lading with the agreed exception. Up to the time when I returned them
319 to Mr. Forbes, they had not been signed by any person; I took the papers to a notary public, and directed him to make the proper protest; I have never seen the protest; I cannot annex the bills of lading, for the reason that I returned them to Mr. Forbes, and have not seen them since. I do not now remember to whom the cotton was consigned. I never saw the vessel after I presented the bills of lading to Mitchell to sign, and understood she was then gone to sea.

To the 14th interrogatory he says: I know nothing of
320 Coleman, nor anything of the condition of the cotton, except as before remarked, that when I saw it on the wharf my attention was not attracted by any peculiarity in its condition.

To the last interrogatory he answers: I know of nothing further than is before testified to.

And to the cross-interrogatories witness answered as follows:

To the first X interrogatory: My business is that of ship agent, and I reside in Lavaca. I have seen the vessel, but never was aboard of her; I don't remember what other vessels were there,
and do not know where the vessel was bound, but only by
321 report; I do not knowthe vessel's tonnage.

To the second X interrogatory he says: I know of my own knowledge that Mitchell was in Lavaca soliciting freight, and superintending the delivery of cotton to the lighter; I saw him; I do not know from whom he received his authority of my own knowledge. I never saw paper A signed at all; I first saw it, after being signed, in Mr. Forbes's office in Lavaca; I think it was
in the month of June, 1854; it was the same time that Mr.
322 Forbes gave me the bills of lading to have signed, as particularly shown in my answer to the 13th interrog. in chief. The business of Mr. Forbes was a receiving and forwarding merchant; Mr. J. Mitchell was a shipping agent; Mr. Forbes was the receiving merchant and shipped the cotton, and Mr. Mitchell was the vessel's agent to receive it from Mr. Forbes. I cannot specify the cotton, nor identify the owners of any part of it.

To the 3d X interrogatory. I did not see the "Water Witch"
when paper A was signed, nor before, that I know of. I nev-
323 er saw A. H. T. Simpson that I know of, and did not know that he was master of the vessel. I know nothing of any other matter inquired of in this interrogatory.

To the fourth X interrogatory he says: Mr. Mitchell acted as agent by going to Lavaca as before said, and soliciting of freight, &c.; he transacted business with Mr. Forbes, and with myself, (on Mr. Forbes's behalf;) I saw him consult with Mr. H. B. Cleveland, of Indianola, as to signing the bills of lading.

324 To the 5th X interrogatory he says: I know nothing as to the matters inquired of in this interrogatory.

To the sixth X interrogatory he says: I do not remember to have seen any cotton go on board the brig; I saw cotton going on board the lighter St. Patrick, as stated in my answers to interrog. in chief; I saw the cotton going on board the s'd lighter; how much do not know. I know nothing of the particulars inquired of in this X interrogatory. I heard the lighter called the "St. Patrick," but do not know who owned her.

325 To the 7th X interrogatory he says: I do not know where the cotton had been lying, and how long it had been lying; I did not particularly examine the cotton. I know nothing of the facts inquired of in this interrogatory.

To the 8th X interrogatory he says: I say I do not know as to the matters in the 9th interrogatory. I do not know if the master

refused to sign receipts or no; it is not usual for the master to sign receipts; it is usual for the mates to sign receipts at the
326 time the cotton is taken on board the vessel, from which receipts the bills of lading are usually made out; I know nothing about it in this case. I was instructed by Mr. Forbes to leave the papers with a notary to protest against the action of the vessel, her master, and agent, in refusing to sign bills of lading, and afterwards understood from Mr. Forbes that he had received the protest from the notary.

To the 9th X interrogatory he says: I do not know who was to pay the lighterage of the cotton; I do not know who dis-
327 bursed the brig; I did not know Mr. Champion, or hear of him.

To the 10th X interrogatory he says: I had no relation to the paper A, except that I brought the paper down to Mr. Mitchell, and showing it to him as his contract with Mr. Forbes; the parties to the paper were Mr. Robert M. Forbes and Mr. J. Mitchell, as agent of the "Water Witch;" Mr. Forbes was the shipper of the cotton, and Mr. Mitchell agent of the vessel; I know this from having transacted business with both parties; I did not see
328 the cotton on the brig, nor know where it would be put on her.

To the 11th X interrogatory he says: My answers to the 12th interrog. in chief are from my own knowledge; I obtained the knowledge from having acted in the business of ship agent, doing business of this kind.

To the 12th X interrogatory he says: I never was present when any bills of lading were offered to the captain in person; I tendered the bills of lading to Mr. Mitchell as agent of the vessel; I offered but one set of bills of lading, and have no knowledge
329 of any others that were offered. I do not know to whom the cotton was consigned—that is, I do not now recollect.

To the 13th X interrogatory he sayeth: I neither have nor had any interest in the cotton; I never had any connection with the cotton or the parties, except, as is before shown, by the special appointment of Mr. Forbes to have the bills of lading signed, and to have the protest made.

To the 14th X interrogatory he says: I know nothing further.

J. H. SAUNDERS.

Examination taken, reduced to writing, and by the wit-
330 ness subscribed and sworn to, the 30th day of May, A. D. 1855, before—

STIRLING T. SEAWELL,
Commissioner.

William H. Armstrong, a resident of Matagorda county, State

of Texas, being duly sworn according to law, and examined on part of libellants, on his corporal oath sayeth, as follows:

In answer to interrogatory first: My name is William H. Armstrong; am in my fifty-seventh year, and reside in Matagorda county, State of Texas. I do not know the parties to the action, except Brower, by reputation as a merchant in New York.
331 I have no interest in the event of this action.

To the 2d interrog. he says: I was *at* the month of June, 1854, a master of a lighter on Matagorda and Lavaca bays, and continued up to the middle of last June; I was master of the lighter St. Patrick, and had been so from the 10th of January, 1854, up to that time. I am now engaged rebuilding my tenements in Matagorda, which were carried away by the gale of September last. I have seen the brig "Water Witch;" she
332 was not at Lavaca to my knowledge at the time inquired of; I first saw her lying in the "Pocket;" she afterwards lay at Powder-Horn wharf, (in Indianola,) and I made fast to her while lying there; I do not know where she was bound; she was not at Lavaca; she was about 12 or 14 miles from Lavaca. It would depend upon the place from which the cargo was rec'd what was the usual place for vessels to lie. No other vessel that I remember was there when I saw her; a schooner came in and left
333 while she was at Powder-Horn, and the steamships were coming and going as usual; I do not know where the schooner belonged, nor where she was bound.

To the 3d interrogatory he says: At that time one J. Mitchell, who resided at Indianola, came and employed me, my lighter, and crew, by the day, to bring cotton from Mr. Forbes's wharf, at Port Lavaca, to the "Water Witch." I never knew him until he came down to make the contract, and never knew his business before. I understood from Mitchell that he was agent for the "Water
334 Witch." I do not remember to have seen the said J. Mitchell write; I do not know his handwriting; I do not know his signature. I have seen Mr. Forbes's signature, and think that on the paper A is his. I do not know whose is the handwriting in the body of the instrument. I did not see it signed.

To the 4th interrogatory he says: I don't know where she was at the time the paper purports to be signed. I think the master's name was Simpson. I know nothing about the execution of
335 the contract, nor who was present when it was signed.

To the 5th interrogatory he says: I do not know to whom the brig was consigned. Mr. Mitchell contracted with me as her agent, and when I asked him for my pay, he sent me to Mr. H. B. Cleveland, of Indianola, who paid me for every day but one, which day he refused to pay for, and I went away without pay for that day. Other than this, I do not know anything as to the

agency of the brig. Mr. Mitchell sent me to Mr. Forbes for the cotton.

336 To the sixth interrogatory he says: I know nothing of the matters in this interrogatory inquired of.

To the seventh interrogatory he saith: Mr. R. M. Forbes did ship cargo on board the "Water Witch." He shipped cotton, and as I lost my books in the September storm, I do not know how many bales. Mr. Forbes shipped nine bags of wool and some hides. It was sent on board the lighter St. Patrick. Maj. Abram Shepperd, sr., owned the lighter, and I was master. There were three lighter loads, to the best of my recollection, of cotton, hides, and wool.

337 To the 8th interrogatory he says: The first lot, I first saw it on the wharf; the balance, I first saw it as it came from Mr. Forbes's warehouse. The bales and ropes of the first lot was in good condition; other lots had a few ropes missing, and some of the bagging a little torn. One bag was somewhat damaged in one corner. I examined it, and found the damage extended in some two or three inches; appeared as if it had been lying on something damp. After getting in two or three inches, the cotton was in good condition. Only one corner of

338 the bale was damaged. Excepting one or perhaps two bags, the cotton was in good average condition, and dry. There were three other vessels loading from Mr. Forbes's wharf at the same time, and I think the cotton I received was in better condition than the average of the cotton received by the other vessels, or either of them, (I mean the wharf at Lavaca.) The weather during the delivery of the third lighter load was very boisterous and heavy, so much so as to compel us to stop discharging

339 from the lighter on board of the brig. I had got all my load, except about twenty bales of cotton and fifty hides, on board the brig, when the rain came on too heavy to work. I delivered the hides on board the brig dry and in good order, and they afterwards got wet on board of the brig. The mate received and counted them when they were dry. After the storm had subsided, the brig threw out the hides which she had received on the (Powder Horn) wharf. I had about fifty or fifty-one hides on my

340 own boat, and kept them in good condition. I delivered between seventy and eighty to the brig. These last got wet, and were thrown out upon the wharf. I afterwards spread them and partially dried them. I then left them in charge of the wharfmaster, requesting he would return them to Mr. Forbes. A portion of the cotton got wet on board of the brig "Water Witch," on her decks, at the time of the s'd storm and rain. All of my last load got wet, except some 18 or 20 bales. I carried about

341 three loads on board the brig, to the best of my present recollection. I carried from eighty-four to ninety bales each load. I gave receipts for all the cotton I received on board my

lighter. The receipts are shown to me, and I have identified them and signed my name to the backs thereof. The cotton is described in s'd receipts as in good order. It is not usual to give receipts for cotton as in good order when it is not so; but if only ropes are missing, or bagging torn, it is usual to sign receipts in good
342 order, with the exception marked "not accountable for torn bagging or missing ropes." There is no exception or qualification on those receipts, except the above specified exception, "not accountable for torn bagging or missing ropes." This exception is meant to apply to such damage as is unavoidably done to bagging and ropes in handling. The qualification did not apply to any one particular bale or set of bales.

To the ninth interrogatory he says: The cotton was hoisted on to the brig from on board the lighter by the brig's tackle or purchase. It was in average good condition, as I have said
343 before. No objections were made at the time by any one, except that the mate noted some few torn bags and missing ropes, such as are incident to the handling of cotton, and the one bag in slightly damaged condition before spoken of. No objection was made to receiving the cotton. The master of the brig was on board, as I now recollect, when the first lot of cotton was delivered on board of her. He was off and on, sometimes on board and sometimes not. I told the captain that R. M. Forbes was the
344 shipper of the cotton. I do not know if the captain when he received the cotton knew it was shipped in accordance with the agreement A. He appeared to recognise Mr. Mitchell as agent. I never heard him speak of the agreement A.

To the 10th interrogatory he says: When I made the contract to lighter the cotton, Mr. Mitchell was to pay me for the lightering. H. B. Cleveland paid me all I was paid. I do not know who disbursed the brig, except who paid me. I do not know
345 Champion or remember to have heard his name before read to me from the interrogatories.

To the 11th interrogatory he says: I have no knowledge of any other agreement for the carriage of the cotton, except that made with me to lighter on board the brig. I know nothing more of the facts inquired of in this interrogatory.

To the 12th interrogatory he says: I know nothing of the matters herein inquired of.

To the thirteenth interrogatory he says: I know nothing of the matters herein inquired of.

To the fourteenth interrogatory he says: One of the bags
346 of cotton, as I have before said, was damaged on one corner two or three inches in; but excepting that one bag, (and perhaps one other,) the cotton was in good average condition when it went on board the brig. The statement that the cotton was wet when it went on board is not true. All the cotton but about twenty (20) bales was put on board the brig before the rain came

on. These twenty bales were on board my lighter, under deck and not wet in such way as at all to injure it. It might
347 have been a little damp on the outside of the bagging, but nothing more, and only a few of the bales were even damp.
To the last interrogatory he says: I know of nothing further.

And to the cross-interrogatories witness answers as follows:

To the 1st X interrog. witness says: My residence and occupation I have fully told before. My residence at the time inquired of in the 2d interrogatory was the same as in the first. I went on board the "Water Witch" while lying at Indianola. I do not know her tonnage. I do not know where she was bound,
348 of my own knowledge. I do not know the names of any vessels which were there at the same time.

To the 2d X interrog. he says: I do not know anything of Mitchell's connection with the vessel, except as I received it from him and heard the captain speak of him. I never saw the paper A until it was shown to me this day at this place. Mr. Forbes shipped the cotton, and Mr. Mitchell was agent for the vessel, and sent me to Mr. Forbes for the cotton. No particular cotton was described to me.

349 To the 3d X interrogatory he says: I did not see the "Water Witch" when paper A was signed, and had not previously seen her. I first saw A. H. T. Simpson on board the brig Water Witch, when I first went on board of her the latter part of May; I think the 30th of May. When I went on board I asked for the captain, and was shown to Simpson, who always afterwards acted as captain, when I was about; I do not know what he knew of paper A.

To the fourth X interrog. he says: I do not know to
350 whom the brig was consigned. I know that Mitchell acted as agent with me, as before set out.

To the 5th X interrogatory he says: I know nothing of these matters.

To the 6th X interrogatory he says: I delivered three lighter loads on board the brig; the loads were from eighty-four to ninety bales each load, besides hides and wool; the lowest number taken at one load was eighty-four bales of cotton; all my three loads I saw go on board the vessel. It was put on board the brig
351 by her own hands, and with her tackle, and was taken up bale at a time; I do not remember each date precisely. It was the latter part of May, and early part of June, 1854. I do not know how Mr. Forbes was connected with the cotton. I received it, and every part of it, from Mr. Forbes, and carried it to the brig on the lighter St. Patrick. I do not know where the cotton had been lying before I went after it, and do not know what crop it was; I was master of the vessel, and knew who built her, and was
352 on her before she was entirely finished.

To the 7th X interrog. he says: I never examined the cotton until it was coming on board my lighter; I do not know where it had before been lying, before that time. I gave the receipts referred to in the eighth interrogatory in chief at the time and place they bear date. I know of no difficulty about receipts. Those signed by me and above referred to are the first and only ones ever presented to me in relation to the cotton.

353 To the 8th X interrogatory he says: I do know the matters which I have testified to in answer to the ninth interrogatory of my own knowledge. I know them by being present and acting in them at the time. I do mean to swear that the cotton was not in bad condition, except with the exceptions before noticed. I know nothing of the captain's refusal to sign receipts; it is usual for the mate to receipt for cargo going on board. He endorsed duplicates of receipts signed by me on their backs. I know nothing about any protest.

354 To the 9th X interrogatory he says: Mr. Mitchell was to pay me by our contract; I have no knowledge of the other facts inquired of in this X interrogatory.

To the tenth X interrog. he says: I have no relation to the paper A, and never knew any about it, or anything in it. I knew nothing of the parties, until the paper is at this examination shown to me, when I recognise Mr. Forbes's signature. I delivered the cotton alongside, and it was hoisted on deck. I did not

355 see, or of my own knowledge know, where it was to be carried, whether on deck or under deck.

To the 11th X interrogatory he says: I know nothing of the matters in this inquired of.

To the 12th X interrogatory he says: I saw no bills of lading, and know nothing of them.

To the 13th X interrog. he says: I never had any interest in, or connection with the cotton in any manner or form, except as a lighterman, before shown, and have now no interest in the same, its proceeds or expenses.

To the 14th X interrog. he says: I have told all I know of the matter.

W. H. ARMSTRONG.

356

Examination taken, reduced to writing, and by the witness subscribed and sworn to the 30th day of May, A. D. 1855, before me.

STIRLING T. SEAWELL,
Commissioner.

JOHN H. BROWER and al., Libellants,
vs.
BRIG WATER WITCH, &c., Respondents.
John Clifton, claimant.

In the District Court for the southern district of New York.

Depositions of witnesses produced, sworn and affirmed, and examined, the thirty-first day of May, one thousand eight hundred and fifty-five, at my office, in the city of Indianola, county of Calhoun, and State of Texas, under and by
357 virtue of a commission issued out of the district court of the United States of America, for the southern district of New York, in a certain cause therein depending, and at issue between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig "Water Witch," &c., John Clifton, claimant, is respondent, as follows: (Comm'r Baldwin still absent.)

1st. Robert M. Forbes, a resident of the county of Calhoun, and State of Texas, aged forty-four years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellants, doth depose and say as follows:
358 In answer to interrogatory 1 he says: My name is Robert M. Forbes; I am forty-four years of age; I reside in Lavaca, Calhoun county, State of Texas; I know J. H. Brower and Benjamin B. Blydenburgh, but no others in the suit. I have an interest both direct and indirect; direct as owner of eleven bales of the cotton in dispute, and indirect as the shipper or agent of two hundred and forty-three bales for various parties.

To the second interrogatory he says: I am a commission and forwarding merchant; have been so engaged for seven years. I
359 never saw the brig Water Witch; she never was at Lavaca. When taking in cargo she lay at Powder Horn wharf, in Indianola. Was bound for New York. The place where she lay was not the ordinary place for taking in cargo from Lavaca. I do not know her size. If other vessels were at Powder Horn at the same time I do not know it, nor do I know what or who.

To the third interrogatory he says: At the time referred to I knew J. Mitchell, who resided at Indianola, same county. I had
360 been acquainted with him some two months. I then, and before, understood him to be a ship broker or ship agent. About the first of May I met Mr. Mitchell at Indianola, when he applied to me for freight for the brig "Water Witch," then expected to arrive from Boston. I proposed to load her, paying the same freight as was then given at Lavaca, if he would take the cotton at the wharf, (meaning the wharf at Lavaca,) which he declined doing, demanding its delivery alongside the brig. Some few days after Mr. Mitchell called on me at Lavaca, and re-
361 newed the proposition for loading the brig, demanding the same terms as when we first spoke of it. No bargain was made then. On the 8th or 9th of May, Mr. Mitchell again called on me at Lavaca, and waiving the delivery by me of the cotton, a written agreement for loading the brig was made and signed be-

tween us. I have seen Mr. Mitchell write on one occasion only, that I remember, i. e., in drawing up the above contract between us, and in signing the same. I recognise the signature
362 marked A, as the genuine signature of s'd Mitchell. The body of the instrument is in the writing of s'd Mitchell. The signature R. M. Forbes is my own signature.

To the fourth interrogatory he says: When the paper marked A was signed, the "Water Witch" had not arrived in the bay, to the best of my recollection; nor did she arrive until some week or more afterwards. I had no communication with the master of the brig, and do not know him. I did not know A. H. P. Simpson as master, nor do I know of my own knowledge that s'd
363 Simpson was advised of the existence of the contract in paper A, as having been made in behalf of the brig. Neither do I know if he ever objected to s'd contract.

To the fifth interrogatory he says: The brig never arrived at Lavaca. I understood that she was consigned to H. B. Cleveland, of Indianola. J. Mitchell was the only agent with whom I had any transactions on account of the brig. I do not know who paid her bills. I do not know who cleared her at the custom-house.
364 I believe Mitchell to have been the agent, not only from the transactions with myself before deposed to both before and after the arrival of the brig in Matagorda bay, but from his having visited Lavaca at several times, and solicited freights for her from all the commission houses in the town, to my own knowledge; and from the fact that his acts were recognised both by the consignee and the captain of the brig, so far as the receiving of the cargo as contracted.

To the sixth interrogatory he says: I have answered this
365 in my answer to the last preceding interrogatory.

To the seventh interrogatory he says: I did ship cargo on the "Water Witch," viz: two hundred and fifty-four (254) bales of cotton of various marks, and nine bags of wool; also one hundred and twenty-one beef hides (121). The brig received from the lighter about seventy (70) of these and laid them on her decks. It then came on to rain and wet the hides, when the brig threw such as she had received on to Powder Horn wharf, and refused
366 to take the remainder from the lighter, which last were also left upon the wharf by the lighter's master. The facts in relation to the partial delivery of the hides from the lighter to the brig, and subsequent events deposed to, I do not know of my own knowledge, but learned them from the master of the lighter. I sent the cargo, or delivered it, to the lighter St. Patrick, Armstrong, captain. (I do not know the owner of the lighter.) There were three lighter loads. I considered delivery to the lighter as delivery to the brig; the lighter being in her employ at the time.

367 To the eighth interrogatory he says: About forty bales of the first lighter load where taken from the wharf where it had been lying for some eight or ten days. Sixty-two bales, marked A. W. M., were receieved respectively, 33 bales the 24th May, 16 bales the 30th of May, and 14 bales the 3d of June 1854, from the country, on wagons, and shipped almost immediately received. One bale was not shipped of this mark. 14 bales, marked C, was received by wagons, the 5th of June, and sent immediately on
368 board the lighter; 21 bales, marked F. D., were received the 1st of June, and shipped immediately. The remainder of the cargo was taken variously from a cotton shed, and from places adjoining my warehouse. As to the condition of the cotton, the marks specified above were in good shipping order, both as to ropes, bagging, and freedom from damage of every kind. The balance was in good average condition. Some of it, the bagging and ropes, torn and missing to some extent—some little, some
369 none. To the best of my recollection, the weather was dry and fair during the month of May, and early part of June; about the 9th to the 12th of June we had frequent showers. Captain Armstrong, master of the lighter, gave receipts for each lighter load, and took to the brig duplicates, which were endorsed by the mate of the brig and returned to me. Three of these duplicates, to wit, that of the 30th of May and 5th of June, (for cotton,) and one of the 8th of June, for hides and wool, were misplaced, or taken from my office without my knowledge, and have never been
370 found and returned by me. The originals referred to, and duplicate for cotton of 8th of May, are here produced and made a part of my deposition. The receipts describe the cotton as being in good order and condition. Two of the receipts have the ordinary exceptions in shipping on this bay, "not accountable for rope and bagging." And the same was intended to be endorsed on them all, but was omitted in a part. The general exception was intended to apply to all, and is claimed by vessels taking cotton from this bay, as a protection against the casualties
371 attendant upon ordinary careful handling, and the cost of mending bagging, &c., on delivery.

To the ninth interrogatory he says: As the brig lay at Powder Horn wharf, I knew nothing of the particulars of its delivery from the lighter to the brig; I heard of no objections being made to receiving the cotton, or to its condition at the time; when delivering the cotton from my wharf Mr. Mitchell was sometimes present superintending, and in a few instances objected to the large size of some few of the bales; I do not know where
372 the master of the vessel was at the time inquired of; if in his place he should have been aboard of the brig, and should have known that R. M. Forbes was the shipper of the cotton; I do not know that the captain knew the cotton was shipped under the

agreement A; I only know that the contract was signed in duplicate, and that Mr. Mitchell, the agent, had a copy of it.

To the tenth interrogatory he says: As I understood the vessel was to pay the lighterage, I was not to pay it, and did not,
373 but presume the vessel did; I do not know who disbursed the brig; don't know J. Champion, or that he had any connection with the brig; nor do I know of any connection between s'd Champion and s'd Mitchell of any character whatever.

To the eleventh interrogatory he says: There was no other agreement in writing in relation to the freight of the cotton; nor was there any subsequent contract or understanding, either verbal or in writing, in regard to the subject; the agreement A was never altered or modified in any way; there was no agreement or consent on my part that the cotton shipped by me, or any por-
374 tion of it, should be carried on deck; in taking cotton on deck it is either shipped at a reduced rate of freight at the shipper's risk, or the vessel gives a clean bill of lading, takes all extra risks, and receives the full rate of under-deck freight. According to the contract the cotton in the present instance should have been carried under deck; the terms used in the contract, "according to the capacity of the vessel," was intended to apply and had reference to her capacity to carry under-deck freight.

375 To the twelfth interrogatory he says: The cargo taken on deck, if at the risk of the shipper, is always taken at a reduced rate of freight; the price paid in this instance was that of under-deck freight; at the time I never consented that any portion of the cargo should be carried on deck; the relative difference between on-deck and under-deck freight varied from January to June, 1854, from one-eighth to one-quarter of a cent per pound; a few days afterwards I shipped, by the schooner A. B. Moore, to
376 New York, at one $\frac{3}{16}$ under deck, and seven-eighths on deck, (according to my present recollection,) being a difference of $\frac{7}{16}$ths.

To the thirteenth interrogatory he says: After taking on board two hundred and fifty-four bales, as before stated, J. Mitchell advised me that the brig could take no more cargo, and that they would want the bills of lading the next day; they were accordingly made out in terms of the agreement by A. C. Pierpont, and presented to J. Mitchell, who came up from the brig. Upon re-
377 ferring to the bills of lading he remarked that they would not answer; that they had privilege of shipping on deck; to which I, of course, objected, and producing agreement A, read it to him; his first objection was, that the brig should not be accountable for the weights, and that we should make such endorsement; after a good deal of discussion and difficulty Mr. Mitchell asked for one of each set of the bills of lading to take down to the

captain, stating that he would return the next day and sign them,
or bring back the duplicates. He did return, but left the du-
378 plicates behind; the discussion of the previous day was re-
newed, which resulted in his refusal to sign the bills of lading, and on my part in protesting against the brig, and sending to New York all the papers in my possession having reference to the shipping of the cotton; the bills of lading hereto annexed, marked B, are the (triplicates) of bills of lading tendered to J. Mitchell; one (triplicate) of each set was forwarded to the consignee; the cotton was consigned to J. H. Brower & Co., Henry
Sheldon & Co., Reid, Sprague & Co., and Clements & Ha-
379 den, all of New York.

To the fourteenth interrogatory he says: the testimony of Coleman, as set out, is incorrect in every particular; my answer to the eighth interrogatory shows the true condition of the cotton at the time.

To the fifteenth interrogatory he says: I have stated all the facts, in my knowledge, bearing upon the issue.

And to the cross-interrogatories he answers as follows, viz:

To the first cross-interrogatory he says: I have stated my residence and business in my answer to the first interrogatory in chief, ("answer to the" interlined); I know the vessel was bound to
380 New York from her receiving cargo for that place; the other facts herein inquired of I know nothing.

To the second X interrogatory he says: I know, of my own knowledge, that J. Mitchell acted as agent of the vessel; I know it from his having contracted with me for freight, and his having solicited freight of others; he also attended to the delivery of the cotton to the lighter, and told me he had employed a lighter to
receive the cotton; the paper A I first saw in my own count-
381 ing-room the 9th day of May, 1854; it was signed in duplicate by J. Mitchell and myself; I retained the copy produced in my possession until I sent it to the consignees in New York; I now recognise it as the same; my own business is before stated in answer to 1st interrog. in chief; the business of J. Mitchell is stated in my answer to the third interrogatory in chief; my connection is stated in my answer to the first interrogatory in chief;
the connection of J. Mitchell was that of agent for the brig
382 in contracting for the freight; no particular cotton referred to.

To the third X interrogatory he says: No, I never saw the "Water Witch," either before or after signing the paper A; I never saw A. H. P. Simpson that I know of, and only know he was master of the brig from report; I do not state, of my own knowledge, that he knew of the existence of paper A.

To the fourth X interrogatory he says: I do not state, of my own knowledge, to whom the brig was consigned; I understood
383 that she was consigned to H. B. Cleveland; I stated that J. Mitchell acted as her agent in soliciting and contracting for freight, in the hiring of lighters and superintending the delivery of the cotton.

To the fifth X interrogatory he says: As before stated, J. Mitchell solicited and contracted with me for freight on the part of the brig; soliciting freight at various times shortly preceding the 9th May, 1854, and on that day closed the contract for loading her; I do not remember that any one was present when the paper A was signed but Mitchell and myself; any conversation that was had be-
384 tween Mitchell and myself at the time was in relation to the employment of lighters; the probable time of the arrival of the brig and the delivery of the cotton; all I know of the captain's knowledge or approbation, I have before said, was from his receiving the cotton sent down in the terms of the contract.

To the sixth X interrogatory he says: I saw none of the cotton go on board of the "Water Witch;" I superintended the delivery of the cotton to the lighter, and saw and examined most of
385 it; I do not know how it was put on board of the brig; it was sent down in three lighter loads, at the times and in the quantities shown by the receipts signed by W. H. Armstrong. The cotton was received by R. M. Forbes from various persons in the country, in his capacity of commission merchant, and sent down to the brig in a lighter employed by themselves, (the brig and agents;) the cotton was delivered to the lighter in the quantities and from the places set forth in my answer to the eighth interrogatory in chief, some of it having been taken from the
386 wharf, some directly from the wagons, some from a cotton shed, and some from a platform adjoining the warehouse. I cannot say without reference to the dates of reception of each particular mark, as shown by my cotton-book, how long each particular lot had been lying or in store, except as before specified; I have not the cotton-book by me to refer to, except that showing receipts from the 15th of May to 29th of August; my others are at my office, in Lavaca. It was all, so far as I know, of
387 the crop of 1853. The lighter was named the St. Patrick; I do not know her owner.

To the seventh X interrogatory he says: I particularly examined all the lots of cotton as they were delivered to the lighter, and previous to its delivery I frequently saw and noticed it. I did not see all of the receipts given. The receipt dated 30th of May was made out by myself and signed in my presence; they were given and signed at the delivery of each lighter load, and no difficulty about the condition of the cotton occurred, either with the
388 captain of the lighter, Mitchell, the agent, or the captain

of the brig. No receipts were refused to be signed by the captain of the lighter or of the brig, that I know of, except for the hides, which after having been taken on board the brig, were thrown upon the wharf.

To the eighth X interrogatory he says: Such facts as are stated in my answer to ninth interrogatory in chief, as of my own knowledge, I do know of my own knowledge; I know them from personal observation. I mean to and do swear that the cotton,
389 as a cargo, was in good average condition for shipment, and not in bad order, except as before specified of the condition of the ropes and bagging, of some part of it. The captain refused to sign no receipts that I heard of, except, as before stated, for the hides. It is not usual for the master of the vessel to sign receipts; the mate usually does so, and in this case the duplicates were signed by the lighterman and endorsed by the mate. A protest was made by the shipper, in consequence of the refusal of the agent or captain to sign bills of lading.

390 To the ninth X interrogatory he says: I do know of my own knowledge that the lighter was employed by, and was to be paid by, J. Mitchell, as the agent of the brig. I know it from its having been made a part of our contract in the shipment of the cotton. I do not know who disbursed the brig; I do not know who Mr. Champion was or what was his character, nor do I know anything about his being the charterer of the brig.

To the tenth cross-interrogatory he says: I was one of the
391 contracting parties to the paper referred to; J. Mitchell, as agent of the brig, was the other. My relation to the cotton and the paper is shown in my answer to the first interrogatory in chief and herein. I did not see, nor was it plain to me that any part of the cargo should be carried on deck, because, in paper A, referred to, it is stated that the brig should take three hundred to four hundred bales, her stowage not being known. The object was, not to bind her beyond her under-deck capacity.

392 To the eleventh X interrogatory he says: I know of my own knowledge the facts stated in my answer to 12th interrogatory in chief; I derive that knowledge from personal observation and transactions done in my ordinary business.

To the twelfth X interrogatory he says: I was not present when bills of lading were offered to the captain; the bills of lading were handed by me to J. Mitchell, and one of each set delivered to him to be taken to the captain on board the brig; but one set of
393 bills of lading for each lot of cotton was ever made out as intended for different consignees; I was consignee, and made the consignees such.

To the thirteenth X interrogatory he says: My interest in the cotton is shown in my answer to the 1st interrogatory in chief; my connection with the cotton was that of agent for planters and mer-

chants in the interior, and as correspondent with consignees in New York; I have an interest in a portion of the proceeds of the cotton, and have a claim for charges in its receipt and shipment.

To the fourteenth X interrogatory he says: I know of nothing further.

R. M. FORBES.
STIRLING J. SEAWELL,
Commiss'r.

394 Examination taken, reduced to writing, and by the witness subscribed and sworn to, the 31st of May, 1855, before me. STIRLING J. SEAWELL,
Commiss'r.

2d. H. W. Henry, jr., a resident of the town of Lavaca, Calhoun county and State of Texas, aged twenty-three years, occupied as a clerk in a commission house, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz: In answer—

To the first interrogatory he says: My name is H. W. Henry, and am the younger of that name; I am twenty-three years
395 old, and I reside in Lavaca, Calhoun county, Texas; I do not know the parties to this action; I am a clerk in a commission house, and have been so engaged about two years; I have no interest in the event of this action.

To the second interrogatory he says: I have answered to my business, &c., in answer to the first interrogatory; I do not know the brig "Water Witch;" I am not acquainted with any of the other facts inquired of in the 2d interrogatory.

To the third interrogatory he says: I saw J. Mitchell, of
396 Indianola, in May, 1854; he then came to Lavaca on account of the "Water Witch;" I never saw him previous to that time; I know nothing of his business, except his acting as ship agent for the "Water Witch;" he professed to be agent for the "Water Witch;" I never saw Mitchell write, and do not know his handwriting; the signature of R. M. Forbes to the paper A is his genuine signature; I did not see either of the parties sign the paper referred to.

To the fourth interrogatory he says: I know nothing of the matters inquired of in this interrogatory.

397 To the fifth interrogatory he says: The brig did not come to Lavaca, and I know nothing of the facts here inquired of.

To the sixth interrogatory he says: I do not know.

To the seventh interrogatory he says: R. M. Forbes put cargo on board lighters for the "Water Witch;" I remember some cot-

ton sent down, but do not remember how many bales; it was sent by the lighter Saint Patrick, Captain Armstrong; I do not know the owner of the lighter, nor how many loads were sent.

To the eighth interrogatory he says: The cotton when sent aboard of the lighter was taken from the wharf of R. M.
398 Forbes, at Lavaca; the bales and ropes at the time were in as good condition as usual for cotton coming to this market; as well as I remember, the weather was fair; I remember the captain of the lighter coming to my desk to write receipts; it is not usual to give receipts for cargo as in good condition, when it is not so. The exceptions, "Not accountable for ropes or bagging," are called general exceptions, and are put in receipts and bills at port Lavaca at all times and cases, and mean that the party re-
399 ceiving will not be responsible for the casualties attending upon ordinarily careful handling.

To the ninth interrogatory he says: I know nothing in relation to the matters inquired of in this interrogatory.

To the tenth interrogatory he says: I am not acquainted with the facts inquired of.

To the eleventh interrogatory he says: If vessels take freight on deck, it is my understanding they take it at their own risk; of the other facts in this inquired of I know nothing.

To the twelfth interrogatory he says: My understanding was, there was a difference made between deck and under-deck
400 freight; but I do not know what that difference was. Of the other facts inquired of herein I am without information.

To the thirteenth interrogatory he says: I have no information or knowledge of any matter relating to the bills of lading. I do not know to whom the cotton was consigned.

To the thirteenth interrogatory he says: I do not know what was the condition of the cotton when it went on board the brig. The statement of its condition by Coleman, as set out, is not
401 such as it was in when delivered to the lighter. It was then in good average condition.

To the last interrogatory he says: I know of no further or other fact.

And to the cross-interrogatories he answers as follows, viz:

To the first X interrogatory he says: I refer to my answer to the first interrogatory in chief, as to my occupation, &c. Of the other matters in this X interrogatory inquired of I am wholly without any knowledge.

To the second X interrogatory he says: I saw Mr. Mitchell acting as agent only, in soliciting freights. I did not see paper
402 A signed. I think I saw it in Mr. Forbes's hands, some time ago; I do not precisely remember when. It was at La-

vaca. R. M. Forbes was in the receiving and forwarding business. Of J. Mitchell's business I knew nothing, except his acting as agent of the vessel. I do not know the purport of the paper, except that cotton was to be shipped; but do not know what cotton.

To the third X interrogatory he says: I am not informed of the matters inquired about in this X interrogatory.

To the fourth X interrogatory he says: I know nothing
403 at all about the matters inquired of, except as before said. I saw Mitchell acting as agent.

To the fifth X interrogatory witness makes no answer.

To the sixth X interrogatory he says: I did not see any cotton go on board the vessel; I saw cotton go on board the lighter St. Patrick. Mr. Forbes shipped the cotton for planters and merchants from the interior. A portion of the cotton was stacked up on the wharf; some of it might have been in store, but I am not sure of that fact. A portion of it had been lying only a few days;
404 some (at most) but a few weeks. That on the wharf had no shelter; it was stacked up on the head with dunnage; some was stored under a shed. It was all of the previous year's crop. I saw the lighter, and knew her name. I do not know the other facts inquired of in this interrogatory.

To the seventh X interrogatory he says: I did not particularly examine the cotton, but was frequently about amongst it. I do not particularly remember the state of the weather. I can-
405 not say I saw the receipts given; but the captain came to my desk, (I mean Captain Armstrong,) to give receipts, after the cotton was shipped. I know nothing about the captain of the brig giving or refusing receipts.

To the eighth X interrogatory he says: I mean to swear the cotton was in average order of cotton shipped from Port Lavaca. It is usual for the captain to sign bills of lading; but the lighterman generally gives receipts for cotton sent down. I do not know the other facts inquired of herein.

406. To the ninth X interrogatory he says: To this interrogatory witness answers, he knoweth not.

To the tenth X interrogatory witness sayeth: He knoweth not anything of the matters inquired of.

To the eleventh interrogatory witness says: I only know of any difference in freights by general report or understanding, and know no more of the matters.

To the twelfth X interrogatory he says: I was not present when any bills of lading were tendered to the captain, and do not know the consignees.

To the thirteenth X interrogatory he says: I had no connection with either the cotton, the parties, or the suit, or the pro-
407 ceeds or expenses, at any time, and have none now.

And to the last X interrogatory he says: I know of nothing further in relation to the matter.

J. W. HENRY, JR.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, the 31st day of May, A. D. 1855, before me.

STIRLING J. SEAWELL,
Commissioner.

Commissioner Baldwin still absent.

STIRLING T. SEAWELL,
Commissioner.

The deposition of A. C. Pierpont, a witness produced, sworn, and examined the 1st day of June, in the year A. D. one thousand eight hundred and fifty-five, at my office in Indianola,
408 county of Calhoun, State of Texas, under and by virtue of a commission issued out of the district court of the United States for the southern district of New York, in a certain cause therein pending, wherein Jno. H. Brower and Benjamin B. Blydenburgh are libellants, and the brig "Water Witch," &c., John Clifton, claimant, is respondent, as follows:

The said A. C. Pierpont, a resident of Lavaca, Calhoun county, Texas, aged twenty-five years, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the plaintiffs, (libellants,) doth depose and say as follows, viz:

409 To the first interrogatory he sayeth: My name is Alphonse C. Pierpont; I am twenty-five years of age; I reside at Lavaca, Calhoun county, Texas. I have been introduced to Mr. Brower, and know him by reputation. I have no interest in the event of this action.

To the second interrogatory he sayeth: I am just now out of employment; and expect in the course of a week to commence merchandising in the country, (Karnes county.) I have seen the brig "Water Witch." She was not at Lavaca in June, 1854; she
410 lay at the end of a wharf in Indianola, and was bound for New York. She lay some ten miles distant, (I do not know the exact distance.) She was not in the usual place of receiving cargo. The "A. B. Moore" (schooner) was lying there, bound for New York.

To the third interrogatory he says: I became acquainted with J. Mitchell while he was negotiating with Mr. R. M. Forbes for a cargo for the Water Witch. I never knew him before; I never knew his business before that time. I only knew that he repre-

sented himself as agent for the "Water Witch," and was
411 generally reported to be her agent. I have seen Mr. Mitchell write, but do not think I should know his handwriting. I do not know the handwriting of the body of the paper A; I recognise the signature of R. M. Forbes thereto as his genuine signature. I did not see the paper signed by either of the parties.

To the fourth interrogatory he says: I do not know, but think she was lying at Indianola; she was either at Indianola or in the "Pocket," discharging ice. I do not know who was master.
412 I do not know whether the captain of the brig knew of the paper A or no.

To the fifth interrogatory he says: She never came to Lavaca. I do not know her consignee; Mitchell was the only agent I knew.

To the sixth interrogatory he says: Mitchell solicited freight of Mr. Forbes before the paper A was signed. I do not know if the captain knew or approved of it.

To the seventh interrogatory he says: Mr. R. M. Forbes did ship on board the "Water Witch" cargo, as follows: Two hundred and fifty-four (254) bales of cotton, nine bags of wool, and
413 one hundred and twenty-one (121) beef hides. The cargo was all sent to the brig by a lighter; it was the lighter St. Patrick—Armstrong, captain. I do not know the owner or number of loads.

To the eighth interrogatory he says: The cotton was taken from the cotton shed of R. M. Forbes from his wharf, and some of it directly from the wagons which had brought it from the country; the bales and ropes were in average good condition; the cotton was in good order; the weather was fair and pleasant. The light-
414 erman gave the receipts identified by Captain Armstrong, and signed by him; they describe the cotton in "good order and condition;" two of them have the exception, "not accountable for rope and bagging." It is not usual to give receipts for cargo as in good condition when it is not so. I do not know what particular bales were referred to in the exception. Such exceptions generally have reference to slight damage done to rope and bagging in ordinary careful handling.

To the ninth interrogatory he answers: The captain knew that R. M. Forbes was shipper of the cotton. To the other facts
415 inquired of in this interrogatory, the witness sayeth he knoweth not.

To the tenth interrogatory the witness sayeth he knoweth not.

To the eleventh interrogatory he sayeth: There was no agreement that any part of the cargo should be carried on deck. There was no usage for vessels to carry cargo on deck at the risk of the shipper except by special agreement. The cotton in the present case should have been carried under deck. To the other matters herein inquired of he sayeth he knoweth not.

To the twelfth interrogatory he says: The freight on
416 deck is less than that under deck; in this case the freight is the rate of under-deck freight; Mr. Forbes never consented (to my knowledge) that the cargo should be carried on deck; I do not remember what the difference was at the time precisely.

To the thirteenth interrogatory he says: The bills of lading were sent down by either Mitchell or Capt. Armstrong, I do not remember which; afterwards, Joseph H. Saunders was sent down with them, but the vessel had left. I made out the bills of lading, I think; I drew them up as to the parcels by the lighter re-
417 ceipts, and the shipping book as to the rate of freights, by Mr. Forbes's instructions. The bills of lading were not signed by any one that I knew of; I do not know of any protest of my own knowledge, but heard such a thing spoken of at the time; I left the bills of lading with Mr. Forbes. The cargo was consigned to different parties in New York, viz: Henry Sheldon, J. H. Brower & Co., Clements & Hayden, and Reid, Sprague & Co.; the vessel sailed without bills of lading being signed.

Fourteenth interrogatory. To this interrogatory the wit-
418 ness answers: If there was any mud on the cotton, it could have been no more than from the rubbing of the wagon wheel; if the bagging was in any degree torn, it was very slightly so; the cotton was dry when put upon the lighter; I think the testimony of Coleman as set out false in every particular.

To the last interrogatory the witness answers: He knows nothing further as to particulars, but would say that he has checked off a good many cargoes of cotton for New York, from Lavaca, but never saw a better conditioned cargo than that of the Wa-
419 ter Witch, on the average, hardly.

And to the cross-interrogatories the said witness answers as follows:

To the first cross-interrogatory he sayeth: I resided at the time as stated in my answer to 1st interrog. in chief; I was then engaged as general clerk for Mr. R. M. Forbes, sometimes delivering cotton, sometimes writing in his books. I saw the brig when lying at Indianola; I went alongside of her, but do not remember going on board; I know it was stated generally that she was bound for New York, and took cargo for that place; I do not know her ton-
420 nage. I do not remember any names positively.

To the second X interrogatory he says: I only know that Mitchell acted as agent of the brig, and that he told me he was agent. I never saw the paper until shown to me to-day. Mr. Forbes was commission and forwarding merchant, and as such he shipped a part of the cotton; a part of it was his own; J. Mitchell had nothing to do with it, except in his agency before spoken of.

To the third X interrogatory he answers: I saw the
421 "Water Witch" for the first time at Indianola at a date

subsequent to the date of the paper. I do not know A. H. T. Simpson, and do not know if I ever saw him.

To the fourth X interrogatory he says: I only know of Mr. Mitchell acting as agent, as before described, with Mr. Forbes.

To the fifth X interrogatory he says: Mr. Mitchell solicited freights of Mr. Forbes, and Mr. Forbes gave it to him; I do not remember further.

To the sixth X interrogatory he says: I saw none go on board the brig; I saw it all go on board the lighter, or nearly all;
422 it was put on by the crew of the lighter, bale at a time, and rolled from the wharf. The cotton was owned by various persons residing in the interior, all to eleven bales, which belonged to Mr. Forbes. He got it as in his business of commission merchant; I cannot specify the particular marks, but remember some was already on the wharf when the contract was made, some in the warehouse, and some came in from the interior while loading.
The greater portion of it was received while awaiting the
423 readiness of the vessel to receive cargo after the contract was made. That on the wharf had no shelter. That in the warehouse was under cover; it was the crop of that (commercial) year. I saw the lighter; that is what they called her (St. Patrick.)

To the seventh X interrogatory he says: I never went to the cotton on purpose to examine it, but saw it frequently. The weather had been good. I saw the receipts signed. I knew of no difficulty with the captain before the receipts were signed. I know of no receipts, except bills of lading sent to the captain to
424 sign.

To the eighth X interrogatory he says: I know that the captain knew Mr. Forbes was shipper of the cotton, from the fact that no man would employ an agent to engage cargo for him and receive it without knowing from whom it came; such is my supposition. I would not say the cotton was not in good condition; it was generally so; one or two bales might have been in objectionable order, not more. In shipping by a lighter, hired by the vessel, it is usual to take the lighterman's receipt when delivering on board at the wharf; sometimes the captain, sometimes the
425 mate, whichever is on duty, signs receipts; in this case we took the lighterman's receipt; I heard a protest spoken of after the cotton was gone.

To the ninth X interrogatory he says: He knoweth not.

To the tenth X interrogatory witness sayeth: I know nothing of the paper. Mr. Forbes and Mitchell were the only parties I knew. No part of the cotton was to go on deck; after the cotton was sent down I heard Mr. Mitchell contending with Mr. Forbes for more cotton to make out a deck load, and Mr. Forbes said the
426 vessel's capacity meant what she could carry under deck. This brought on words between them.

To the eleventh X interrogatory he says: I know the facts testified to from my experience and practice as shipping or delivery clerk.

To the twelfth X interrogatory he says: I was not present when the bills of lading were tendered to the captain; I know the consignees from the instructions given me to ship to such persons, and that I did so ship to them.

427 To the thirteenth X interrogatory he sayeth: I have no interest, and never had any, in the cotton; I had no connection with the cotton or parties, except as clerk for Mr. Forbes.

To the fourteenth X interrogatory witness says: He knows nothing further, but would say the marks on the cotton were generally plain.

A. C. PIERPONT.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me, the 1st day of June, A. D. 1855.

STIRLING T. SEAWELL,
Commissioner.

543 Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the "Water Witch," whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

ES. 2 bales. Two bales cotton.

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto J. H. Brower & Co., or to their assigns, he or they paying freight for the

544 said cotton at one ¼ cents pr. pound. Charges payable to shipper's order, with 5 p. c. primage and average accustomed.

In witness whereof, the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Port Lavaca, the 14th day of June, 1854.

(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig Water Witch, her tackle, &c., John Clifton, claimant, respondent, this paper was produced and sworn to

by R. M. Forbes, and by him deposed unto at the time of
545 his examination, before

STIRLING T. SEAWELL,
Commissioner.

Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the Water Witch, whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

ED.	37 bales.	Thirty-seven bales of cotton.
Charges:		
Hauling.....	$196 59	Not accountable for bagging, rope, or country damage.
Shipping (40)...	10 00	
Com. 5 p. c.....	9 82	
	$216 41	

Being marked and numbered as in the margin, and are
546 to be delivered in the like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto J. H. Brower & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents pr. pound. Charges payable to the order of the shippers, with 5 p. c. primage and average accustomed.

In witness whereof, the master or clerk of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

547 Dated in Port Lavaca, the 14th day of June, 1854.
(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig "Water Witch," her tackle, &c., John Clifton, claimant, respondent, this paper was produced and sworn to by Robert M. Forbes, and by him deposed to at the time of his examination, before me.

STIRLING T. SEAWELL,
Comm'r.

Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the "Water Witch," whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca,
548 and bound for New York, to say—

Fourteen bales cotton.

	JRK	4	1,834	Not accountable for bagging, rope,
	O & S	6	2,808	or country damage.
	ES	2	950	
	GH	2	942	
		14	6,534 lbs.	

Charges:

	JRK	1	00
549	O & S	1	50
	ES		50
	GH	9	92
		12	92
	JRK	$1	45
	GH	9	92
			47
			50
		10	89

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto J. H. Brower & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents pr. pound, with 5 p. c. primage and average accustomed.

In witness whereof, the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date,
550 one of which being accomplished, the others to stand void.

Dated in Port Lavaca, the 14th day of June, 1854.

(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, vs. The Brig "Water Witch," her tackle, &c., John Clifton, claimant and respondent, this paper was produced and sworn to by Robert M. Forbes, and by him deposed to, at the time of his examination, before me.

STIRLING T. SEAWELL,
Comm'r.

Shipped in good order and well conditioned, by R. M.
551 Forbes & Co., on board the brig called the "Water Witch,"

whereof of A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

Twenty-two bales cotton.
One bale do.

Charges:

$3 00		M	12 bales,	6,278	Not accountable for
2 50	H. W. Jones	10	"	4,883	bagging, rope, and
25	TW	1	"	446	country damage.
$5 75		23		$11,607	

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the port of
552 New York, (the dangers of the navigation only excepted,) unto Clements & Hayden, or to their assigns, he or they paying freight for the said cotton at one ¼ cents per pound, with 5 p. c. primage, and average accustomed.

In witness whereof, the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in Port Lavaca the 14th day of June, 1854.

(Endorsed): R. M. Forbes.

553 At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, vs. the brig "Water Witch," her tackle, &c., John Clifton, claimant, respondent, this paper was produced by Robert M. Forbes, and by him sworn and deposed to, at the time of his examination, before me.

STIRLING T. SEAWELL, *Comm'r.*

Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the "Water Witch," whereof A. H. T. Simpson is master, now lying at the port of Port Lavaca, and bound for New York, to say—

Sixteen bales cotton.

	TDJ	14	Not accountable for bagging, ropes, or
554	M	1	country damage.
	NB	1	
		16 bales.	

Charges: Shipping, $4 00.

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the port of New York, (the dangers of the navigation only excepted,) unto Henry

Sheldon & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents per pound. Charges payable to shipper's order, with 5 p. c. primage, and average accustomed.

In witness whereof, the master or clerk of the said vessel
555 hath affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in Port Lavaca the 14th day of June, 1854.

(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, vs. The brig "Water Witch," her tackle, &c., John Clifton, claimant, respondent, this paper was produced and sworn to by R. M. Forbes, and by him deposed to, at the time of his examination, before me.

STIRLING T. SEAWELL, *Comm'r.*

556 Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the Water Witch, whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

Ninety-eight bales cotton.

Weights:

	3,298	SSC	1	Not accountable for bagging, rope,
	470	CB	1	or country damage.
	1,249	[A]	3	
	970	H	2	
557	1,014	[H]	3	
	440	F [D]	1	
	860	[S] D	2	
	3,422	[F] S	8	
	874	DC	2	
	2,825	WPH	6	
	530	JB	1	
558	31,640	AWM	62	
	47,392 lbs.		98	

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the port of New York, (the dangers of the navigation only excepted,) unto Henry Sheldon & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents pr. pound, and charges, payable to shipper's orders, with 5 p. c. primage, and average accustomed.

In witness whereof, the master or clerk of the said vessel hath

affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in Port Lavaca the 14 day of June, 1854.

(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, vs. The brig "Water Witch," her tackle, &c.,
559 John Clifton, claimant and respondent, this paper was produced and sworn to by R. M. Forbes, and by him deposed to, at the time of his examination, before me.

STIRLING T. SEAWELL, *Com'r.*

Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the "Water Witch," whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

Nine bales cotton.
Six " "

Charges:

46 51	SK	9 bales.	Not accountable for bagging, rope, or
1 50	DFB	6 do.	country damage.
$48 01		15 bales.	

560 Being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the port of New York, (the dangers of the navigation only excepted,) unto Henry Sheldon & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents per pound; charges payable to shipper's order, with 5 p. c. primage, and average accustomed.

In witness whereof, the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

561 Dated in Port Lavaca the 14th day of June, 1854.

(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, vs. The brig "Water Witch," her tackle, &c., John Clifton, claimant, respondent, this paper was produced and sworn to by R. M. Forbes, and by him deposed to, at the time of his examination, before

STIRLING T. SEAWELL, *Comm'r.*

Shipped in good order and well conditioned, by R. M. Forbes &

Co., on board the brig called the Water Witch, whereof A.
562 H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

Seven bales cotton.

[M]

Charges: Shipping $1 75.

Not accountable for bagging, rope, or country damage.

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto Reid, Sprague & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents p'r pound. Charges payable
563 to the order of the shipper, with 5 p. c. primage and average accustomed.

In witness whereof the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Port Lavaca, the 14th day of June, 1854.

(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, vs. The Brig "Water Witch," her tackle, &c., John Clifton, claimant, respondent, this paper was produced and
564 sworn to by R. M. Forbes, and by him deposed to at the time of his examination before

STIRLING T. SEAWELL,
Commissioner.

Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the "Water Witch," whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

C 16 bales. Sixteen bales cotton.

Charges:	Hauling	98	91
	Shipping	4	00
565	Com'n 5 p. c.	4	94
		$107	85

Not accountable for bagging, rope, or country damage.

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto J. H. Brower & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents p'r pound, charges payable to shipper's orders, with 5 p. c. primage and average accustomed.

In witness whereof the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Port Lavaca, the 14 day of June, 1854.

(Endorsed): R. M. Forbes.

566 At the execution of a commission for the examination of witnesses between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig "Water Witch," her tackle, &c., and John Clifton, claimant, respondent, this paper was produced and sworn to by R. M. Forbes, and by him deposed to before

STIRLING T. SEAWELL,
Commissioner.

Shipped in good order and well conditioned, by R. M. Forbes & Co., on board the brig called the "Water Witch," whereof A. H. T. Simpson is master, *no* lying in the port of Port Lavaca, and bound for New York, to say—

Twenty-eight (28) bales cotton. Nine (9) bags wool.

567 Charges:	59 27	H	12 bales,	5,403	Not accountable for bagging, ropes, or country damage.
	79 94	JBB	12 "	5,863	
	28 30	B&M	4 "	2,080	
			28 "	13,346 lbs.	
	6 65		[S] 9 bags wool.		
	$174 16				

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto 568 Henry Sheldon & Co., or to their assigns, he or they paying freight for the said cotton at one ¼ cents p'r pound, charges payable to shipper's orders, with 5 p. c. primage and average accustomed.

In witness whereof the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Port Lavaca, the 14th day of June, 1854.

(Endorsed): R. M. Forbes.

At the execution of a commission for the examination of witnesses, between John H. Brower and Benjamin B. Blyden- 569 burgh, libellants, vs. The Brig "Water Witch," her tackle, &c., John Clifton, claimant, respondent, this paper was produced and sworn to by R. M. Forbes, and by him deposed at the time of his examination before

STIRLING T. SEAWELL,
Commissioner.

LAVACA, *May* 30, 1854.

Received from R. M. Forbes & Co., in good order and condition, on board the sch. called the St. Patrick, the following goods, which I promise to deliver in like , order, and condition, to brig "Water Witch," in Lavaca bay, (the danger of navigation excepted,) paying freight as agreed on, not accountable
570 for torn bagging or missing ropes.

Marks:			
	SSC	7	bales cotton.
	JRK	4	" "
	H	6	" "
	O&S	6	" "
	TDJ	14	" "
	M	1	" "
	NB	1	" "
	CB	1	" "
	SK	9	" "
	[A]	1	" "
	JBB	3	" "
	B&M	2	" "
	AWM	30	" "
		85	

W. H. ARMSTRONG.

(Endorsed): W. H. Armstrong, R. M. Forbes, A. C. Pierpont.

At the execution of a commission for the examination of witnesses, in a cause pending in the United States district court for the southern district of New York, between John H. Brower
571 and Ben. B. Blydenburgh, libellants, and the brig "Water Witch," and John Clifton, respondents, this paper writing was produced to W. H. Armstrong, R. M. Forbes, and A. C. Pierpont, and by them deposed unto respectively at the times of their several examinations before Sterling T. Seawell, commissioner.

STIRLING T. SEAWELL,
Comm'r.

LAVACA, *June 5th*, 1854.

Received from R. M. Forbes & Co., in good order and condition, on board the lighter called the St. Patrick, the following goods, which I promise to deliver in like order and condition to the brig Water Witch, (the danger of navigation excepted,) paying
572 freight as customary—to say:

Eighty-five bales cotton, being marked as per margin. Not accountable for rope and bagging.

W. H. ARMSTRONG.

Marks:		
	FD	21
	AWM	32
	[M]	19
	JBB	9
	[A]	2
	B & M	2
		85

(Endorsed): W. H. Armstrong, R. M. Forbes, A. C. Pierpont.

At the execution of a commission for the examination of witnesses in a cause pending in the district court of the United States for the southern district of New York, between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig Water Witch and John Clifton, respondents, this paper writing
573 was produced and shown to W. H. Armstrong, R. M. Forbes, and A. C. Pierpont, and by them deposed unto at the times of their examinations respectively, before Stirling T. Seawell, commissioner.

STIRLING T. SEAWELL, *Com'r.*

LAVACA, *June 8th*, 1854.

Received from R. M. Forbes & Co., in good order and condition, on board the lighter called the St. Patrick, the following goods, which I promise to deliver in like order and condition to the brig Water Witch, (the danger of navigation excepted,) they paying freight as per contract:

Eighty-four bales cotton, marked as per margin, except two bales marked TNW, which will be delivered to—

W. H. ARMSTRONG.

574 Marks:		
	FD	16
	DFB	6
	[H]	3
	F [D]	1
	[S] D	2
	TNW	2×
	ES	2
	[P] S	8
	DC	2
	TW	1
	C	16
	H	6
	H. W. Jones,	10
	WPH	6
	JB	1
	GH	2
		84

× TNW left at Powder-Horn.

(Endorsed): W. H. Armstrong, R. M. Forbes, A. C. Pierpont.

At the execution of a commission for the examination of witnesses in a cause pending in the district court of the United States for the southern district of New York, between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig Water Witch, her tackle, &c., and John Clifton, respondents, this paper writing was produced and shown to W. H. Armstrong, R. M. Forbes, and A. C. Pierpont, and by them deposed unto at the times of their examination respectively, before Stirling T. Seawell, commissioner.

STIRLING T. SEAWELL, *Com'r.*

LAVACA, *June 8th*, 1854.

576 Received from R. M. Forbes & Co., in good order and condition, on board the lighter called the St. Patrick, the following goods, which I promise to deliver in like order and condition to the brig Water Witch, (the danger of navigation excepted,) they paying freight as pr. contract:

Marks: [S] 9 bags wool.
∧ 121 beef hides.

One hide in dispute.

W. H. ARMSTRONG.

(Endorsed): W. H. Armstrong, R. M. Forbes, A. C. Pierpont.

At the execution of a commission for the examination of witnesses, in a cause pending in the United States district court
577 for the southern district of New York between John H. Brower and Benjamin B. Blydenburgh, libellants, and the brig Water Witch, her tackle, &c., and John Clifton, respondents, this paper writing was produced and shown to W. H. Armstrong, R. M. Forbes, and A. C. Pierpont, and by them deposed unto at the times of their examination respectively, before Stirling J. Seawell, commissioner.

STIRLING T. SEAWELL, *Com'r.*

LAVACA, *June* 8, 1854.

Received from R. M. Forbes & Co., in good order and condition, on board the lighter called the St. Patrick, the following goods, which I promise to deliver in like order and condition to the
578 brig Water Witch, (the danger of navigation excepted,) they paying freight as pr. contract:

Marks:			
	FD	16	Eighty-four bales cotton, marked as pr. margin, except two bales, TNW, which will be delivered to—
	APB	6	
	[H]	3	
	F[D]	1	
	[S]D	2	

X TNW	2
ES	2
[F]S	8
DC	2
TW	1
C	16
H	6
H. W. Jones	10
WPH	6
JB	1
GH	2
	84

(Endorsed): 81 bales of cotton; one bale in dispute, in bad order. 9 bags wool, in bad order. John Conly.

At the execution of a commission for the examination of witnesses in a cause pending in the United States district court
579 for the southern district of New York, between John H. Brower and Benj. B. Blydenburgh, libellants, and the brig Water Witch and John Clifton, respondents, this paper writing was produced and shown to Robert M. Forbes, and by him deposed unto at the time of his examination before Stirling T. Seawell, commissioner.

STIRLING T. SEAWELL,
Commissioner.

R. M. FORBES.

G. F. B. 1.—Shipped in good order and condition, by R. M. Forbes, on board the brig called the Water Witch, whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

Fourteen (14) bales cotton.

Charges:

580	10.58		JRK,	4 bales,	1834, acc. BBP.
		150	O & S,	6 "	2808, Oliver & Sheffield.
			ES,	2 "	950, H. Rhode.
	10.39		GH,	2 "	942, G. Hancock.
	12.92			14	6534

(P. 204, Cr. R. M. F. Cash July 6, '54.)
Ins'd $50. C. 1½.
(Not accountable for loss on weight. Not accountable for bagging, rope, and country damage.)

581 Being marked and numbered as in the margin, and are to be delivered in the like good and condition at the

port of New York (the dangers of the navigation only excepted) unto J. H. Brower & Co., or to their assigns, he or they paying freight for the said cotton at one and ¼ c. per pound, with 50 p. c. primage and average accustomed.

In witness whereof, the master or clerk hath affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

582 Dated in Port Lavaca, the 14th day of June, 1854.

G. F. B. 2.—Shipped in good order and condition, by R. M. Forbes, on board the brig called the Water Witch, whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

Sixteen bales cotton.

Acc. B. A. S. & Burke. C 16 bales, 8810.

583 Charges:

Hauling.....	$98 91	Not accountable for bagging and
Shipping.....	4 00	rope, or country damage.
Com'n.....	4 94	Not accountable for loss in
	$107 85	weight.

$\frac{1}{4}$

(¼ 204. Cr. R. M. F. Cash July 6, '54.)
Ins'd $50. C. 1½.

Being marked and numbered as in the margin, and are to be delivered in like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto J. H. Brower & Co., or to their assigns, he or they paying freight for the said cotton at 1 and ¼ ct. p'r pound, with 5 per cent. primage and average accustomed.

In witness whereof, the master or clerk of the said vessel
584 hath affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in Port Lavaca the 14th day of June, 1854.

G. F. B. 3.—Shipped in good order and condition, by R. M. Forbes, on board the brig called the Water Witch, whereof A. H. T. Simpson is master, now lying in the port of Port Lavaca, and bound for New York, to say—

Thirty-seven bales cotton.

Acc. F. Dieterick. F. D., 37 bales. 18,870 lbs.

585 Charges: Acc. F. Dieterick.

Hauling 40 bales	$196 09	Not accountable for bagging
Shipping.....	10 00	and rope.

Com..... 9 82 Not accountable for loss in weight.

Say..... $215 91

(Fr. 204. Cr. R. M. F. Cash, July 6, '54.)
Ins'd $50. C. 1¼.

Being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of New York, (the dangers of the navigation only excepted,) unto J. H. Brower & Co., or to their assigns, he or they paying freight
586 for the said cotton at 1 and ¼ ct. p'r pound, with 5 per cent. primage and average accustomed.

In witness whereof, the master or clerk of the said vessel hath affirmed to 4 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated in Port Lavaca, the 14th day of June, 1854.

UNITED STATES OF AMERICA,
Southern District of New York,
City, County, and State of New York, ss.

Be it remembered, that on this twenty-seventh day of
587 Nov., in the year of our Lord one thousand eight hundred and fifty-five, I, George W. Morton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in
588 civil causes depending in the courts of the United States,' passed March 1st, 1817," and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, at the new City Hall, in the city of New York, in the said southern district of New York, in the State aforesaid, Ab'm H. T. Simpson, to testify and the truth to say on the part and behalf of the claimants in a certain suit or
589 matter of controversy now depending and undetermined in the district court of the United States for the southern district of New York, at the city of New York, in the district aforesaid, wherein John H. Brower is libellant against the brig Water Witch, Wm. H. Sheldon is libellant against the same, and John Clifton is libellant against a quantity of cotton.

And the said Ab'm H. T. Simpson, being about the age of thirty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth,

590 in the matter of controversy aforesaid, I did carefully examine the said Ab'm H. T. Simpson, and he did thereupon depose, testify, and say as follows, viz:

I am a seafaring man, and reside in Boston, Mass. I am about to return to Boston as soon as I get through with this examination. I was master of the brig Water Witch, on her voyage from Boston to Indianola, Texas, and from there to New York. I put into Key West on account of heavy weather. I know there was a man named John Mitchell in Indianola. He was not the
591 agent of the vessel. He or the persons for whom he acted were bound to provide the vessel with a cargo of cotton. The cotton was to be received alongside within reach of the vessel's tackles; neither I myself, nor the owners, nor any one, to my knowledge, agreed to receive it in any other way. The vessel had nothing to do with the lighters, except to receive the cotton from the tackles. The lightermen were not authorized to sign receipts for the vessel. The cotton was in very bad condition when it came on board; some bales with only one rope on them; others
592 with little or no bagging on—all in very bad condition. Some of the cotton was rotten six or eight inches in the bale. I objected to receiving it; I tried to get clear of receiving it. I took a full cargo. It was impossible to get marks on the bags when I received them. I told the lighterman I could not deliver them from marks. The lighterman said the cotton was shipped as refuse cotton, and it did not make any difference about the marks. Receipts for the cotton were presented for me to
593 sign. I refused to sign them. Bills of lading were presented for me to sign. I refused to sign them. The cotton was stowed in the usual manner on board of my vessel. I had carried 3 cargoes of cotton from Charleston before, but none from Texas. I know what is termed country damage in Texas. This cotton had laid out exposed, and had been damaged by fresh water. There were other vessels loading at Indianola at the same time I was, the Catharine Rogers and the steamer Charles Morgan. There were some others; I do not know what they were. I had
594 heavy weather on the second day out. The gale of wind continued three days, and made the ship leak badly and labor very much. We had gales of wind and calms all the way home. I know Mr. Dunlop. The cotton received no more injury than was usual. It heated probably on deck. I kept it covered up with new sails. It would heat by being wet and damaged as the cotton was.

Cross-examined: I had commanded the Water Witch about 11 months, including this voyage. I sailed from Boston direct
595 to Indianola on this voyage. I carried out a cargo. I went out under a charter party. I was chartered through Daniel Draper & Sons and Hall & Cochrane, of New Orleans,

to H. B. Cleveland, of Indianola. (Mr. Owen calls for the charter-party. Mr. Donohue states that it is at present in Boston.)

Q. Was that a charter for the voyage from Boston to Indianola and back, or how otherwise? (Ob. to.)

A. The voyage was from Boston to Indianola; thence to Boston or New York.

Q. Was the charter for the whole vessel or not? (Ob. to.)

596 A. Yes; both on and under deck, reserving, however, the cabin room for crew and stores. I arrived at Indianola on or about the 19th day of May. The vessel was consigned to H. B. Cleveland, a merchant of that place. I was ready to receive cargo in about 9 days after my arrival. I saw a man by the name of John Mitchell at Indianola. He appeared to have the management of the lighters that brought the cotton down. The cotton was brought from Port Lavaca, which was 7 miles from Indianola. Sometimes I received the cotton, and sometimes

597 the mate. I was generally there when the lighter came down. I do not know the number of lighter loads; but I think the lighters brought about 40 bales each time. My vessel lay alongside of a wharf called Powder Horn wharf. There may have been a few bales; I think there were a few bales of this cotton put on the wharf when we had not room for them on deck. When the lighters came we had to discharge them at once, and if we had not room on deck we put them on the wharf.

598 There were not more than 10 or 15 bales on the wharf at once at the most. We were about 16 days receiving this cotton. It rained during that time. The lighter laid alongside in a rain storm 2 days without discharging. It rained frequently; the showers were heavy. About two-thirds of the cotton was stowed under deck the whole length of the vessel. I had from 90 to 100 hides, 8 or nine bundles of hair, and nine or ten bags of wool, beside the cotton. All except the hides came down

599 in lighters. The hides were taken from the wharf. There were some 30 or 40 bales of cotton taken from the wharf that did not come down in lighters. The cotton was put below as fast as it came on board until the hold was full. It did not lay a night on deck. I may have signed for the hair and wool, and also for the hides; but did not sign for the cotton. I saw bills of lading for the cotton, which were presented to me for signature. On being shown 3 bills of lading, witness says: I cannot

600 say these bills of lading were presented me to sign, but that the bills of lading that were presented to me, as before stated, which I refused to sign, were like 1 and two G F B, and perhaps like the other marked 3 G F B, except, I think, all of them contained country damage. It may be that these were the bills presented. I think that the bills of lading presented for the cotton which went to Sheldon were like these. Mr. Mitchell pre-

sented the bills of lading to me and requested me to sign
601 them. I refused to sign them because the bills of lading stated the cotton to be in good order. There was nothing specified in the charter-party about signing the bills of lading. (Ob. to.)

I think there was a cargo book kept by the mate on a leaf of the log-book of the number of bales received. I can't say whether it contained the condition of the bales. There was a log-book kept by the mate while we lay in port. The log and cargo book is on board of the brig, I believe. I don't command her now. The mate's name was John Conley. The cotton on deck was stowed two on the edge aft and forward, one on the end; they were either on the edge or on the end; none of it was laid flat.

Re-direct. I laid two days at Indianola after I was loaded, waiting to have bills of lading presented, and laid afterwards eight days within fifteen miles.

Re-cross. Tere were no other bills of lading presented to me to sign except those before referred t . I never saw Forbes.

A. H. T. SIMPSON.

Read to and subscribed by the witness on his examina-
603 tion, before me, this 27th day of November, 1855.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, George W. Morton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Con-
604 gress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,' passed March 1st, 1817," and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and
605 that his place of residence is in the city of Boston, more than 100 miles from the city of New York, the place of trial of the above named cause.

I further certify that a notification of the time and place of taking the said deposition signed by me, was made out and served on the counsel for the opposite parties to be present at the taking

of the said deposition, and to put interrogatories if he or they might think fit.

I further certify, that on the twenty-seventh day of November, in the year of our Lord one thousand eight hundred and
606 fifty-five, I was attended by the proctors for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with
607 my own hand to the court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

GEO. W. MORTON,

United States Commissioner, duly appointed by the
608 *Circuit Court of the United States for the Southern District of New York, in the Second Circuit.*

Filed the 28th day of November, 1855.

	Fees,	12 40
609	Copies,	2 50
		$14 90

UNITED STATES OF AMERICA.

Eastern District of the State of Louisiana, city of New Orleans.

Be it remembered, that on the eighteenth day of December, A. D. 1855, before me, the undersigned, commissioner of the United States, in and for the eastern district of Louisiana, duly commissioned and sworn by the hon. the circuit court of the United States, for the fifth circuit and district aforesaid, at my office, in the city of New Orleans, State of Louisiana, personally came and appeared James Lawless, a person of sound mind and lawful age, a
610 witness on part of the libellant, in a certain civil cause in admiralty, now depending in the hon. the district court of the United States, for the southern district of New York, wherein John Clifton, of the brig "Water Witch," is libellant, of a quan-

tity of cotton and nine bags of wool, and the said witness having been by me first duly examined and cautioned, and sworn to speak the whole truth, and nothing but the truth, touching and concerning the matters in controversy between the parties in the said cause, did depose and say as follows, viz:

611 *Deposition of James Lawless, taken* 18 *December*, 1855.

I am about thirty-five years of age; I am now capt. of the steamship Charles Morgan, plying between this port and Galveston and Indianola, Texas; my home is in Bristol, Rhode Island; I may remain here for six months to come, and I may not remain for two months; I am partially acquainted with Capt. Simpson of the brig "Water Witch;" I saw this brig down at Port Powder Horn in June, 1854; that is the place where the brig received her
612 cargo; I went on board of her while she was receiving her cargo of cotton on that trip; and I also saw the cotton lying on the wharf before it was taken on board; it was in a very bad condition; it was in the worst condition of any I ever saw, with the exception of a few bales we brought up about the same time; it was more like a bunch of cotton with a few ropes tied around them than like cotton bales; they were mostly destitute of bagging; it was in such a condition that I think it would have been
613 impossible to have taken it on board and have carried it any voyage in any other condition than in bulk; I received some cotton at about the same time, and brought it to New Orleans and landed it in bulk; I suppose there were then on the dock some forty or fifty bales in that condition; it looked like old country damage, as if it had left home in bad order, and had continued to grow worse all the way down; cotton in such a condition would occupy a good deal more room than cotton properly baled;
614 cotton in the condition of this is more liable to damage than if in snug bale. I would not have given a clean bill of lading for such cotton as that was. In May and June, 1854, we brought up a good deal of cotton from Powder Horn in very bad condition. The cotton generally that season seemed to have been left exposed to the weather, and to have been thus injured. I have no interest in this suit. The brig "Water Witch" arrived at Powder Horn in May, and left in June. I think that was the only voyage she made to that place that season.

615 JAMES LAWLESS.

I certify that the said deposition was by me reduced to writing in the presence of the said witness, and that, after having carefully read to him the same, he did sign it in my presence; and I further certify, that the reason of taking the said deposition was, that the place where the said witness lives, as well as the place of his pre-

sent occupation, is more than one hundred miles from the city of New York, the place where the court in which the said cause is pending, and where the same is expected to be tried. No
616 notice was given to the adverse party, the claimant, or owner of the said "quantity of cotton and nine bags of wool," nor to their agents or attorneys, because neither the said claimant or owner, nor any of their agents or attorneys, were within one hundred miles of the city of New Orleans, the place where the said deposition was taken, to the knowledge of this commissioner; but this commissioner was informed by the witness, at the time of the taking of his deposition, that the owner or claimant, or person interested in the said libelled goods, had on that day,
617 and previously to the taking of said deposition, passed through this city on his way North; and I further certify, that I am not of counsel or attorney to any of the parties to the said cause, nor am I in any manner interested in the event thereof. I have retained this deposition in my possession for the purpose of sealing and addressing it, with my own hand, to the court for which it was taken.

In testimony whereof, I have hereunto annexed my hand and private seal, at the city of New Orleans, within the eastern
618 district of Louisiana, this twenty-seventh day of December, A. D. 1855.

J. W. GURLEY, [SEAL.]
Commissioner of the United States, in and for the Eastern District of Louisiana.

Circuit Court of the United States, for fifth circuit and eastern district of Louisiana—City of New Orleans.

I certify that J. W. Gurley, who has signed the foregoing, is a commissioner of the United States, for the eastern district of Louisiana, duly commissioned and sworn, and was so at the time of taking the said deposition, viz., on the 18th Dec'r inst., all of
619 which appears of record; and I further certify that his said signature is genuine.

Witness my hand and the seal of the said court, at the city of New Orleans, State of Louisiana, this (27th) twenty-seventh day of December, A. D. 1855, and of the inde-
[SEAL.] pendence of the United States of America the eighteenth year.

J. W. GURLEY,
Clerk of the U. S. Circuit Court, for 5th Circuit
620 *and Eastern District of Louisiana.*

Endorsed: 12. 64. U. S. District Court. John Clifton vs. A Quantity of Cotton, &c. Deposition of James Lawless. Owen & Vose, pr. lib'ts.

Opened and filed in open court Jan. 11, 1856.

U. S. District Court.

CLIFTON
vs.
A QUANTITY OF COTTON, supposed to contain bales, &c.

JOHN H. BROWER, &c.,
vs.
BRIG WATER WITCH, &c.

WM. HENRY SHELDON
vs.
THE BRIG WATER WITCH, &c.,

SOUTHERN DISTRICT OF NEW YORK, *ss.*

621 John Coleman, of the city of Boston, Massachusetts, sixty-nine years of age, mariner, being duly sworn, says, that he was cook and steward of the brig "Water Witch" on her voyage ending in New York in August last; that deponent has been to sea 49 years and upwards; that deponent has seen a great deal of the taking in and carrying of cotton; never saw cotton in the condition the cargo of the W. W. was in when shipped. The ropes and bagging was rotten; also cotton on the outside was rotten;
622 had been apparently exposed to weather for a long time, some of it dirty and muddy; it would scarcely bear rolling when we took it on board, and was wet; you could wring the water out of some; you could scarcely see any marks on it; some no marks at all. The cotton was stowed as well as it could be under the condition of the cotton; the cotton did not get any damage on board the vessel, except from leak; great care was taken of the cotton; it was handled as tenderly as we could here on getting it out. Captain made objection to the cotton; he laid sails
623 over the cotton on the voyage.

Cross-examined.

I joined the Water Witch on the 28th March last; she was then at East Boston, and proceeded in her to Texas; I did not assist in taking the cargo aboard the vessel. I saw the cargo when it came aboard; it came alongside in schooners; I forget the name of the pl[illegible] where they came from. There was but one schooner, but it came different times; I think she came three times. We had no other cargo but cotton. I was aboard all the time the ves-
624 sel lay there. The cargo was stowed in the hold, and on deck. I know Mr. Mitchell of that place; I took him to be the owner of or getting the cotton; I saw him aboard the vessel before and after the cotton came on board, and while it was coming

on board; he slept aboard two or three times. I saw him and the captain talking together. I did not know R. M. Forbes; I don't know who he is. I have been most of my time in vessels going to southern ports.

Ques. What proportion of this cotton was damaged?

625 I don't know; I would not have given much for any of it. To tell the truth, there was not one bale fit to be shipped and sent off; it was all bad. The bales were not all broken, but the bagging was all rotten.

Ques. How came you to observe this cotton?

Ans. Because I have seen a great deal of cotton, and I never saw any so ragged before.

Ques. How do you know that the cotton was well stowed?

Ans. I know that it was pretty well stowed considering

626 such big bales; I did not assist in stowing it. That on the deck was stowed some on the head and some on the flat; some places two tier on the flat, and in *or* or two places there may have been three tier on the flat. I can't tell how many bales there were on deck. The captain told Mr. Mitchell that the cotton was not good, and if he had his way he would not have the cotton aboard. This was when we were taking the deck load, a day or so before we sailed; they were then talking about signing bills

627 of lading for the cotton. I did not hear much what was said; I happened to be near at the time of the conversation.

his
JOHN ⋈ COLEMAN.
mark.

Sworn to before me this 28th day of Oct., A. D. 1854.
ROBT. W. ANDREWS,
Comm'r of Deeds.

Endorsed: U. S. District Court. Clifton vs. A quantity of cotton, &c. Deposition of John Coleman. C. Donohue, proctor.

AF.
NKH. Ac. Clark C. Brien & Co.

Shipped in order and condition by Baldridge, Sparks & Co. on board the brig called the Water Witch, whereof A. H. T. Simpson is master for this voyage, now lying *the* the port of Indianola,

628 Texas, and bound for New York, to say—

JT, wght.	13,184	(45.) Forty-five bales cotton, marked as per margin, weighing 21,-082 lbs. Not accountable for torn bagging, missing rope, country damage.
CWT, wght.	7,898	
JT, $173 04	3,970	
CWT, 103 66	2,647	
276 70	6,617	

Charges $66 $\frac{17}{100}$.

Being marked and numbered in the margin, and are to be delivered in the like good order and condition, at the port of
629 New York, (the dangers of the seas only excepted,) unto Mess. Henry Sheldon & Co., or to their assigns, he or they paying freight for the said cotton one and one-fourth cents pr. pound, (charges sixty-six $\frac{17}{100}$ $, payable to shipper's order,) with 5 per cent. primage and average accustomed. In witness whereof the master or purser of the said vessel hath affirmed to 3 bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in Indianola, Texas, the 14th day of June, 1854.

H. B. CLEVELAND.

(*Endorsed:*)

630 Messrs. H. Sheldon & Co.

GENT: We could not get off the remainder by this brig, but hope to forward by the next sch'r for N. York in some 12 or 15 days; we will value on you for chg's.

Hoping same safe at hand,

We remain, &c.,

BALDRIDGE, SPARKS & Co.
HENRY SHELDON & Co.

C., N. K. H.

Messrs. J. H. Brower & Co.

To Brig Water Witch & owners.

For freight from Port Lavaca, 67 bales cotton, 34,234 lbs., a 1¼ c.....	$427 91
Primage 5 p. c.....	21 40
	$449 31

New York, August 19, 1854.

DRAPER & DEVLIN, *Consignees.*

Endorsed: Brig Water Witch. Frt. bill 449 31. Aug. 19, '54.

A. AG.
14 July, '54. NKH.

LAVACA, *June* 20, '54.

Messrs. HENRY SHELDON & Co., *New York.*

GENT: Enclosed please find B. L. brig "Water Witch,"
631 157 B. C. pr. sundry ac'ts, viz: H 12 bales, JBB 12 do., B & M 4, and 9 bales wool, pr. ac. S. M. Swenson, charges $174 16, to yr. Dr. SK, 9 B, DFB; 6 bales for ac't respectively S. H. Sommen & Co., and McKean, Hardman & Co.; charges 48 01, to yr. Dr. TDJ, 14, M 1, NB 1—say 16 bales for ac. T. D. Johnson, charges $4, to yr. Dr. and sundry marks—say 98

bales for my ac. These B. L. you will perceive are not
632 signed, the agent refusing to sign, and the brig having gone to sea without advising me or signing the B. L. The reason alleged, that the understanding was that we should ship on deck; in proof of the ship't and terms of charter, see mem. of agreement with J. Mitchell, agent, protest and lighter's receipts. By reference to the latter, you will see that we sent down 151 beef hides, which were delivered by the lighter, and left on Powder Horn wharf, tho' sent down at the particular request of the agent.

Hope the enclosed papers will be sufficient to enable
633 you recover the cotton, &c., and to proceed against the vessel for damages. The hides belong to S. M. Swenson, and have doubtless been seriously damaged by exposure to rain, &c.

Will write again this evening with B. L. per A. B. Moore, for 274 bales; 246 for my ac't.

Y'rs, truly,

R. M. FORBES.

Endorsed: R. M. Forbes. June 20th, 1854.

July 6. AH.
July 14. NKH.

LAVACA, *June* 20, 1854.

Messrs. J. H. BROWER & Co., *New York.*

634 GENT: Please find B. L. pr. brig "Water Witch," say—

JRK,	4	bales	cotton,	pr. ac.	R. B. Peck.
O & S,	6	"	"	"	Oliver & Sheffield.
ES,	2	"	"	"	H. Rhode.
p. 204. GH,	2	"	"	"	George Hancock.
C,	16	"	"	"	B. A. Shepard & Burk.
FD,	37	"	"	"	F. Dolenete.

Charges, say $337 [18], to yr. Dr. You will see that these bills lading are not signed, the agent who engaged the fr't refusing to do so; and the brig having gone to sea without my being advised, have sent to Henry Sheldon & Co. mem. of
635 charter, protest and lighter rec'pts, which hope will be sufficient to enable the consignees to insure and to recover the cotton from the brig. If the law will reach the case, make the vessel pay for a wanton violation of the rights of others; also please find enclosed B. L. pr. A. B. Moore.

O & S,	44	bales,	Oliver & Sheffield,	charges	$752 96
TS,	3	"	Geo. Hancock,	"	16 76
FS,	2	"	H. Rhode,	"	16 03
HH,	2	"	B. B. Peck,	"	14 89

636 C, 38 bales, B. A. Shepherd & Burk, charges 394 98
RS & Co., 11 " wool, Judson & Parish, " 16 78

Charges to yr. Dr., $1,212 40

Will hand you further B. L. pr. sch'er Venice.
Y'rs, truly,
R. M. FORBES.

Endorsed: R. M. Forbes. Lavaca, June 20, '54. R., July 6. A " 14.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-six. Present, the Honorable Nathan K. Hall, district judge.

JOHN F. BROWER and others
vs.
638 THE BRIG WATER WITCH, her Tackle, &c. } Vol. 12, page 58.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that it be referred to one of the commissioners of this court to ascertain and report the amount of sea damage upon the lot of cotton consigned to the libellant and set forth in the libel.

And it is further ordered, that on the coming in and confirmation of the commissioner's report a final decree be entered,
639 according to the rights of the parties as determined by the report.

And it is further ordered, that the reference in this case and in the cases of William H. Sheldon vs. The brig Water Witch, &c. and John Clifton vs. A quantity of cotton, which were heard at the same time with this case, and relate to the same cargo of cotton, proceed together as a single reference, unless the proctors of one or more of the parties in interest file with the clerk, on or before the 15th day of November next, a notice that such
640 party or parties elect to require a separate reference in the case or cases in which he or they may be interested.

And it is further ordered, that the testimony read or taken on the hearing of this cause may be read and used upon such reference, so far as the same may be competent and applicable to the questions to be determined upon such reference.

(Signed) N. K. HALL.

A true copy from the original on file.
Oct. 29, 1856.

GEO. F. BETTS, *Clerk.*

641 Filed the twenty-first day of October, 1856.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-six. Present, the Honorable Nathan K. Hall, district judge.

WILLIAM H. SHELDON
vs.
THE BRIG WATER WITCH, her Tackle, &c. } Vol. 12, page 59.

642 This case having been heard on the pleadings and proofs and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that it be referred to one of the commissioners of this court to ascertain and report the amount of sea damage upon the lot of cotton consigned to the libellant and set forth in the libel.

And it is further ordered, that on the coming in and confirmation of the commissioner's report a final decree be entered, according to the rights of the parties, as determined by the report.

643 And it is further ordered, that the reference in this case and in the cases of John H. Brower and others vs. The brig Water Witch, &c. &c. and John Clifton vs. A quantity of cotton, which were heard at the same time with this case, and relate to the same cargo of cotton, proceed together as a single reference, unless the proctors of one or more of the parties in interest file with the clerk, on or before the 15th day of November next, a notice that such party or parties elect to require a separate
644 reference in the case or cases in which he or they may be interested.

And it is further ordered, that the testimony read or taken on the hearing of this cause may be read, and used upon such reference, so far as the same may be competent and applicable to the questions to be determined upon such reference.

(Signed) N. K. HALL.

A true copy from the original on file.
Oct. 29, 1856.

GEO. F. BETTS, *Clerk.*

645 Filed the twenty-first day of October, 1856.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-six. Present, the Honorable Nathan K. Hall, district judge.

JOHN CLIFTON vs. A QUANTITY OF COTTON. } Vol. 12, page 64.

646 This case having been heard on the pleadings and proofs and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court, that it be referred to one of the commissioners of this court to ascertain and report the freight chargeable on the transportation of the cotton from a port in Texas to the city of New York, and delivered to John H. Brower and others and to William H. Sheldon, severally and respectively, allowing, at the "on-deck" rate, for so much of the cotton
647 as was actually carried on deck, and also the amount of sea damage upon such cotton during the voyage.

And it is further ordered, that on the coming in and confirmation of the commissioner's report a final decree be entered, according to the rights of the parties, as determined by the report.

And it is further ordered, that the reference in this case and in the cases of John H. Brower and others vs. The brig Water Witch, &c. and William H. Sheldon vs. The brig Water Witch, which were heard at the same time with this case, and relate to
648 the same cargo of cotton, proceed together as a single reference, unless the proctors of one or more of the parties in interest file with the clerk, on or before the 15th day of November next, a notice that such party or parties elect to require a separate reference in the case or cases in which he or they may be interested.

And it is further ordered, that the testimony read or taken on the hearing of this case may be read and used upon such reference, so far as the same may be competent and applicable to the
649 questions to be determined upon such reference.

(Signed) N. K. HALL.

A true copy from the original on file.
Oct. 29, 1856.

GEO. F. BETTS, *Clerk.*

Filed the twenty-first day of October, 1856.

U. S. District Court.

JOHN H. BROWER et al. vs. THE BRIG WATER WITCH. } 12. 58.

WM. H. SHELDON vs. THE SAME. } 12. 59.

JOHN CLIFTON vs. A QUANTITY OF COTTON. } 12. 64.

Nov. 29, 1856.

The proctors for the respective parties being present,
650 Messrs. Owen and Vose proceeded with the reference, and put in all the testimony used on the trial of the cause, both direct and cross, on behalf of the libellants in the first two causes, and the claimant in the third entitled cause.

Messrs. Beebe and Donohue put in all the testimony used on the trial on the part of the claimants in the two first causes, and of the libellants in the third above entitled cause.

Adjourned until Dec'r 15, at 10 a. m.
" " " 16.
" " " 20.
" " " 27.
" " January 8, 1857.
Adjourned to Jan'y 9, "
" " " 10, "
" " " 17, "
651 " " " 20, "
" " " 23, "
" " " 25, "
" " M'ch 26.
" " " 30.
" " April 16.
" " " 27.
" " " 29.
" " May 4.
" " " 6.
" " Aug. 27.
" " Sept. "
" " Dec. 2.
" " " 23.
" " " 28.
" " Jan'y 13, 1858.
" " " 16.
" " " 25.

1858, April 29th. Com'r att'y and made report.

District Court of the United States for the southern district of New York.

JOHN H. BROWER and others
vs.
THE BRIG WATER WITCH, her Tackle, &c.

WILLIAM H. SHELDON
vs.
THE SAME.

JOHN CLIFTON
vs.
A QUANTITY OF COTTON, J. H. Brower, &c., and William H. Sheldon, Claimants and Respondents.

In pursuance of the several decretal orders made in the above entitled causes, dated 21st October, 1856, whereby it was referred to the undersigned, one of the commissioners of this court, to ascertain and report the amount of sea damage upon the cotton therein mentioned and referred to, and the freight chargeable for the transportation and delivery thereof, allowing for that portion thereof which was carried on deck, at the rate of freight for "on deck" cargo, and by which said orders the undersigned was directed to proceed with the said three cases together as one reference, unless the proctors for one or more of the parties should elect to have a separate reference, I, the undersigned, George W. Morton, the commissioner to whom the matters in the said orders were referred, do report, that as neither of the parties elected to have a separate reference, I proceeded with the same as one case, according to the directions of the said orders; that I have been attended upon the said reference by the proctors and advocates of the respective parties to the said several actions, and have heard the allegations and proofs of the said parties respectively, and have heard their respective claims; that it was claimed that the evidence established (and which was not denied by the other parties) that there were 269 bales of cotton, weighing 130,825 pounds, shipped on board of the brig "Water Witch," in the pleadings mentioned, to be transported and conveyed therein to New York, and that the same was so transported and delivered in a damaged state on the 23d August, 1854; that 100 bales thereof, weighing 48,600 pounds, were transported on the deck of the said vessel; and that the freight upon the cotton carried upon deck was three-fourths of a cent a pound, amounting to $\$364\frac{50}{100}$, and that the freight upon the residue was one and a quarter cents a pound, amounting to $1,027 81; that the primage was $69 61, and the whole freight and primage amounted to $\$1,461\frac{92}{100}$, of which John H. Brower & Co., the libellants in the first above entitled action, were

bound to pay, as their proportion chargeable upon the cotton delivered to them, $362 81, and the said William H. Sheldon $1,099 11, as the proportion thereof chargeable upon the cotton delivered to him.

That the said John H. Brower & Co. and William H. Sheldon, the libellants above named, respectively claimed and insisted that, by the evidence, it appeared, and that they were entitled to a
657 report, that the "sea damage" upon the whole cotton amounted to the sum of $4,182 72—that is to say, the cotton delivered to the said J. H. Brower & Co. had sustained sea damage to the amount of $1,288 20, and that delivered to the said William H. Sheldon had sustained sea damage to the amount of $2,894 52; that the amount of such sea damage was disputed by the proctor and advocate for the respondents in the first and second above entitled actions, and for the libellant in the cause thirdly above entitled, who claimed that such sea damage did not exceed
658 upon the entire lot of cotton the sum of $2,924 52—that is, to say, the sea damage to the cotton belonging to the said J. H. Brower & Co. did not exceed $793 81, and that belonging to the said William H. Sheldon did not exceed the sum of $2,130 71, which several amounts he was willing and consented to have reported as the sea damage, and the said offer was duly, and by way of compromise, accepted by the proctors and advocates for
659 the other parties; wherefore, upon the allegations and proofs made before me by the proctors and advocates of the respective parties in respect of the several matters referred to me in and by the said several decretal orders above referred to, I do, accordingly, report as follows:

First. That the sea damage sustained upon the lot of cotton belonging to John H. Brower & Co., the libellants in the first above entitled action, amounted at the delivery thereof to the sum of $793 81 above mentioned; and that after deducting there-
660 from the freight and primage thereon at the rates above stated, amounting to $362 81, there remained due to such libellants for such sea damage the sum of $431, which, with interest from the 23d of August, 1854, to date of this my report, amounts to the sum of $511 47.

Second. That the sea damage sustained upon the lot of cotton belonging to William H. Sheldon, the libellant in the second above entitled action, amounted at that time to the sum of $2,130 71 above mentioned; and that after deducting the freight
661 and primage thereon at the rates aforesaid, amounting to $1,099 11, there is due to the libellant in such last mentioned action for such sea damage the sum of $1,031 60, which, with interest thereon from the date last mentioned to the date of this my report, amounts to the sum of $1,224 30.

Third. That the freight chargeable on the transportation of the cotton in the action thirdly above entitled, wherein John Clifton is libellant, (being the same cotton mentioned and referred to in the first and second above entitled causes, and which had sustained sea damage as before stated,) amounted in the aggregate,
662 at the rates before mentioned, to the sum of $1,392 31, as above stated, which, with five per cent. primage thereon, being $69 61, amounts to the sum of $1,461 92, and that the sea damage upon the said cotton amounted to the respective sums above mentioned, being in the aggregate $2,924 52, exceeding the freight and primage thereon in the amounts before reported; which freight and primage having been duly credited in said actions as before stated, leaves nothing due to John Clifton,
663 the libellant in the said last mentioned action.

All which is respectfully submitted.

New York, April 29, 1858.

GEO. W. MORTON,
U. S. Comm'r.

Endorsed: Vol. 12, 58, 59, 64. U. S. District Court. John H. Brower and al. vs. The Brig Water Witch, her tackle, &c. William H. Sheldon vs. the same. John Clifton vs. A quantity of cotton, J. H. Brower, &c., and Wm. H. Sheldon, cl'ts and respd'ts. Commissioner's report.
664 Filed May 4th, 1858.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the 4 day of May, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Samuel R. Betts, district judge.

JOHN H. BROWER et al.
vs.
THE BRIG WATER WITCH, &c.
WILLIAM H. SHELDON
vs.
THE SAME.
JOHN CLIFTON
vs.
A QUANTITY OF COTTON, John H. Brower and Wm. H. Sheldon, clmts. and respdts.

} Vol. 12, pages 85, 59, 64.

665 George W. Morton, United States commissioner, brings into court the report made by him in the above entitled causes, and on motion of Messrs. Owen & Vose, proctors for the

libellants, it is ordered that the same be confirmed, unless exceptions are filed thereto within two days from this date.

666 Filed the fourth day of May, 1858.
U. S. District Court.

JOHN H. BROWER and al.
vs.
THE BRIG WATER WITCH, &c.

WILLIAM H. SHELDON
vs.
THE SAME.

A QUANTITY OF COTTON
ads.
JOHN CLIFTON.

On the pleadings, proceedings, and com'r's report in the above entitled actions, let the proctors for the brig Water Witch show cause before the court on the 12th day of June inst., at 11 o'clock a. m., why the final decrees to be entered upon said com'r's report should not be entered separately, or why the form of said
667 decrees should not be as heretofore proposed by the proctors for the owners of the cargo.

New York, June 5, 1858.

SAM. R. BETTS.

Order according to the above notice, no one having appeared before to oppose the same at the time appointed therefor.

SAM. R. BETTS.

New York, June 15th, 1858.

Endorsed: 12. 58. U. S. District Court. John H. Brower and al. vs. The brig "Water Witch," &c. Order to show cause. Owen & Vose, lib't's proctors.

Due service of a copy of within order admitted. Dated June 5, 1858.

BEEBE, DEAN & DONOHUE.

668 Filed 19th June, 1858.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Saturday, the 19th day of June, in the year one thousand eight hundred and fifty-eight.

Present, Hon. Samuel R. Betts, district judge.

JOHN H. BROWER and BENJAMIN B. BLYDENBURGH
vs.
THE BRIG WATER WITCH, her Tackle, &c.

A decretal order having been entered in this cause, on the 21st October, 1856, whereby it was referred to George W. Mor-
669 ton, United States commissioner, to ascertain and report the amount of sea damage upon the cotton therein mentioned and referred to, and by which order the said commissioner was directed to proceed in this and two other causes, in the said order mentioned, relating to the cargo of cotton, and the freight thereon, (and which had been tried together with this action) as one reference, unless the proctors should elect to have a separate reference, to the end that upon the coming in and confirmation of the report of the said commissioner upon the matters referred to him,
670 a final decree might be entered according to the rights of the parties as determined by such report; and the commissioner having heard the allegations and proofs of the parties to the respective actions, and having proceeded with the said reference as one case, did afterwards, and on the 29th April, 1858, make his report in writing, entitled in the above cause, as well as in the other two cases respectively, whereby it appears that the sea-damage sustained upon the lot of cotton belonging to the libellants in this action amounted to the sum of $793 81, and
671 that there was due to the claimant and respondent in said action (being the libellant in one of said actions) for freight and primage upon the libellant's cotton so damaged as aforesaid, the sum of $362 81, which being deducted from the sea-damage aforesaid left a balance due the libellants in this action for the said sea-damage of $431, which with interest thereon to the date of said report amounted to the sum of $511 47, which report was on the 4th day of May instant duly presented to this court, at a
672 stated term thereof, and filed with the clerk, and an order for confirmation thereof nisi was entered; and it appearing that exceptions thereto have been filed within the time allowed by the rules of this court, and the said exceptions having been brought on for argument, and the same having been overruled, it is therefore, on motion of Owen & Vose, proctors for the libellants, ordered, adjudged, and decreed that the said report be and the same is hereby in all things duly confirmed, and that the libellants
673 do recover against the brig "Water Witch," her tackle, &c., the sum of $511 47, so reported to be due to them as aforesaid over and above the freight and primage, with interest from the date of the said report, together with their costs, to be taxed, and that the said brig, her tackle, &c., be condemned therefor.

And on like motion, it is further ordered that, in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be and the same hereby is entered against John Clifton,
674 principal, and John E. Devlin and David S. Draper, sureties, on their bond given on the discharge of the property

arrested, for the sum of three thousand dollars, the amount of their bond executed in discharging the said vessel from the custody of the marshal.

And on like motion, it is further ordered that, unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court, that the libellants have their execution on this judgment to satisfy this decree.

Endorsed: 12. 58. U. S. District Court. John H. Brower
675 and al. vs. The Brig "Water Witch," &c. Decree. Owen & Vose, libell'ts' proct's. Filed and docketed June 19, 1858.

Ordered that a separate decree, conformable to the within draught, be entered in this cause.

June 15, 1858.

SAM. R. BETTS.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Saturday, the 19th day of June, in the year one thousand eight hundred and fifty-eight.

Present, Hon. Samuel R. Betts, district judge.

WILLIAM H. SHELDON
vs.
676 THE BRIG WATER WITCH, her Tackle, &c.

A decretal order having been entered in this cause, on the 21st day of October, 1856, whereby it was referred to George W. Morton, United States commissioner, to ascertain and report the amount of sea-damage upon the cotton therein mentioned and referred to, and by which order the said commissioner was directed to proceed in this and two other causes in the said order mentioned relating to the cargo of cotton and the freight thereon (and which had been tried together with this action) as one reference,
677 unless the proctors should elect to have a separate reference to the end that upon the coming in and confirmation of the report of the said commissioner upon the matters referred to him, a final decree might be entered according to the rights of the parties as determined by such report; and the commissioner having heard the allegations and proofs of the parties to the respective actions, and having proceeded with the said reference as one case, did afterwards, and on the 29th day of April, 1858, make his report in writing, entitled in the above cause, as well as in
678 the other two causes respectively, whereby it appears that the sea-damage sustained upon the lot of cotton belonging to the libellant in this action amounted to the sum of $2,130 $\frac{71}{100}$, and that there was due to the claimant and respondent in said action (being the libellant in one of said actions) for freight and

primage upon the libellant's cotton so damaged as aforesaid the sum of $1,099 $\frac{11}{100}$, which being deducted from the sea-damage aforesaid, left a balance due the libellant in this action for
679 the said sea-damage of $1,031 $\frac{60}{100}$, which with interest thereon to the date of said report amounted to the sum of $1,224 $\frac{30}{100}$, which report was, on the 4th day of May instant, duly presented to this court, at a stated term thereof, and filed with the clerk, and an order for confirmation thereof nisi was entered; and it appearing that exceptions thereto have been filed within the time allowed by the rules of this court, and the said exceptions having been brought on for argument, and the same having
680 been overruled, it is therefore, on motion of Owen & Vose, proctors for the libellant, ordered, adjudged, and decreed that the said report be, and the same hereby is, in all things confirmed, and that the libellant recover against the brig "Water Witch," her tackle, &c., the sum of $1,224 $\frac{30}{100}$, reported to be due to him as aforesaid over and above the freight and primage, with interest thereon from the date of the said report, together with his costs, to be taxed, and that the said brig, her tackle, &c., be condemned therefor.

681 And on like motion, it is further ordered that, in pursuance of the act of Congress passed March 3d, 1847, a summary judgment be, and the same hereby is, entered against John Clifton, principal, and John E. Devlin and David S. Draper, sureties, on their bond given on the discharge of the property arrested, for the sum of eight thousand dollars, the amount of their bond, executed in discharging the said vessel from the custody of the marshal.

And on like motion, it is further ordered, that unless an appeal be taken to this decree within the time limited and pre-
682 scribed by the rules of this court, that the libellant have his execution on this judgment to satisfy this decree.

Endorsed: 12. 59. U. S. District Court. William H. Sheldon vs. The Brig Water Witch, &c. Decree. Owen & Vose, l'b'ts proct's. Filed and docketed June 19, 1858.

Ordered that a separate decree, conformable to the within draught, be entered in this cause.

June 15, 1858.

(Signed) SAM. R. BETTS.

At a stated term of the district court of the United States of America for the southern district of New York, held
683 at the City Hall, in the city of New York, on Saturday, the 19th day of June, in the year one thousand eight hundred and fifty-eight.

Present, Hon. Samuel R. Betts, district judge.

JOHN CLIFTON
vs.
A QUANTITY OF COTTON, John H. Brower and Benjamin B. Blydenburgh, and Wm. H. Sheldon, Claimants.

A decretal order having been entered in this cause on the 21st October, 1856, whereby it was referred to George W. Morton, United States commissioner, to ascertain and report the freight chargeable upon the transportation of the cotton from a port in Texas to the city of New York, and delivered to the
684 claimants, John H. Brower & Co., and Wm. H. Sheldon, severally and respectively, allowing at the "on deck" rate for so much of the cotton as was actually carried on deck, and also the amount of sea damage upon such cotton during the voyage; and that upon the coming in and confirmation of such report, a final decree be entered according to the rights of the parties, as determined by the report, and by which order the said commissioner was directed to proceed under the said order, and under the orders in the respective actions brought by the said J. H.
685 Brower & Co., and William H. Sheldon, against the brig Water Witch, for damages to the said cotton, (which three actions had been tried together,) as one reference, unless the parties otherwise elected, as by the said decretal order will, on reference thereto, more fully appear; and the said commissioner having made and filed his report dated 29th April, 1858, whereby it appears that he proceeded with the reference under the said three several orders as one, and having heard the allegations and proofs of the parties, he found and so reported that the freight
686 chargeable upon the said cotton amounted in the aggregate upon the cotton belonging to the aforesaid claimants, respectively, to the sum of $1,392 31, which, with five per cent. primage thereon, being $69 61, amounted in all to the sum of $1,461 92, of which the said J. H. Brower & Co. were liable to pay $362 81, and the said Wm. H. Sheldon $1,099 11; and that the sea damage sustained by the cotton belonging to the respective claimants amounted to the respective sums
687 therein mentioned, being in the aggregate $2,924 52, exceeding the amount due thereon for freight and primage in the several sums therein mentioned; and that having credited to the said vessel in the several actions above referred to for damages, the freight and primage aforesaid, there remained nothing due to the libellant in this action. And it appearing that exceptions have been filed in this action to the said report, and that this action was commenced after the two actions above referred to had been commenced by the claimants herein, and the said
688 exceptions having been brought on for argument, and the

the same having been overruled, it is, therefore, on motion of Owen & Vose, proctors and advocates for the claimants and respondents, ordered that the report of the said commissioner be, and the same is hereby, in all things confirmed; and that the libellants recover nothing in this action; and that the libel herein be dismissed with costs to the claimants, to be taxed against the libellant, and that the claimants have execution therefor.

Endorsed: 12. 64. U. S. District Court. John Clifton vs. A quantity of cotton, &c. Final decree for cl'm't. Owen
689 & Vose, cl'ts' proct's.

Ordered that a separate decree conformable to the within draught be entered in this cause.

June 15, 1858.

SAM'L R. BETTS.

Filed 19th June, 1858.

U. S. District Court.

THE BRIG WATER WITCH, her Tackle, &c., } ads.
JOHN H. BROWER et al. }

You will please to take notice that we appeal to the circuit court of the United States for the southern district of New York, in the second circuit, from the final decree entered in this cause.

Dated July 6, 1858.

Yours, &c.,
BEEBE, DEAN & DONOHUE,
690 *Proctors for Claimant.*

To OWEN & VOSE, ESQS.,
Proctors for Libellants.
GEO. F. BETTS, ESQ., *Clerk.*

Endorsed: 12. 58. U. S. District Court. Brig Water Witch ads. John H. Brower, &c. Notice of appeal. Beebe, Dean & Donohue, proctors. Filed 7th July, 1858.

U. S. District Court.

THE BRIG WATER WITCH, her Tackle, &., } ads.
WILLIAM H. SHELDON. }

You will please to take notice that we appeal to the circuit court of the United States for the southern district of New York,

in the second circuit, from the decree entered in this cause.
691 Dated July 6, 1858.

Yours, &c.,
BEEBE, DEAN & DONOHUE,
Proctors for Claimants.

To OWEN & VOSE, ESQS.,
Proctors for Libellants.
GEO. F. BETTS, ESQ., *Clerk.*

Endorsed: U. S. District Court. 12. 59. Brig Water Witch ads. William H. Sheldon. Notice of appeal. Beebe, Dean & Donohue, proctors. Filed 7th July, 1858.

U. S. District Court.

JOHN CLIFTON
vs.
A QUANTITY OF COTTON.

You will please to take notice that we appeal to the circuit court of the United States for the southern district of New York, in the second circuit, from the final decree entered in
692 this cause.
Dated July 6, 1858.

Yours, &c.,
BEEBE, DEAN & DONOHUE,
Proctors for Libellants.

To OWEN & VOSE, ESQS.,
Proctors for Claimants.
GEO. F. BETTS, ESQ., *Clerk.*

Endorsed: U. S. District Court. 12. 64. John Clifton vs. A quantity of cotton. Notice of appeal. Beebe, Dean & Donohue, proctors. Filed 7th July, 1858.

of the United States of America for the southern district of New York, in the second circuit.

JOHN H. BROWER et al.,
693 Libellants & Appellees,
vs.
THE BRIG WATER WITCH, her Tackle, &c., John Clifton, Claimant & Appellant.
} Bond for Costs.

Know all men by these presents, that we, David S. Draper and John E. Devlin, are held and firmly bound unto the above named libellants and appellees in the sum of twelve hundred and fifty dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our

and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the seventeenth day of
694 March, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above named claimants ha prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to ef-
695 fect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

DAVID S. DRAPER, [SEAL.]
JNO. E. DEVLIN. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 17th day of March, 1859, before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

David S. Draper and John E. Devlin, being duly sworn, each deposes and says that he resides in the city of Brooklyn, and that he is worth the sum of twelve hundred and fifty dollars, over and above all his just debts and liabilities.

DAVID S. DRAPER,
JNO. E. DEVLIN.

696 Sworn to this 17th day of March, A. D. 1859, before me.

The sufficiency of the sureties to the within bond approved.
N. Y., 17th March, 1859.
(Signed) SAM'L R. BETTS,
District Judge.

Filed this 17th day of March, 1859.

of the United States of America for the southern district of New York, in the second circuit.

WILLIAM H. SHELDON, Libellant and Appellee,
vs.
THE BRIG WATER WITCH, her Tackle, &c.
} Bond for Costs.

Know all men by these presents, that we, David S. Draper and John E. Devlin, are held and firmly bound unto the above
697 named libellant and appellee in the sum of twenty-eight hundred dollars, to be paid to the said libellant, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above named claimant hath prosecuted an appeal to the circuit court of the United States for the southern
698 district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

DAVID S. DRAPER, [SEAL.]
JNO. E. DEVLIN. [SEAL.]

Sealed and delivered, and taken and acknowledged, this
699 17th day of March, 1859, before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

David S. Draper and John E. Devlin, being duly sworn, each deposes and says that he resides in the city of Brooklyn; that he is worth the sum of twenty-eight hundred dollars, over and above all his just debts and liabilities.

DAVID S. DRAPER,
JOHN E. DEVLIN.

Sworn to this seventeenth day of March, A. D. 1859, before me.

GEO. W. MORTON,
U. S. Com'r.

The sufficiency of the sureties to the within bond ap-
700 proved.

N. Y., 17 March, 1859.

(Signed) SAM'L R. BETTS,
District Judge.

Filed this 17th day of March, 1859.

of the United States of America for the southern district of New York, in the second circuit.

JOHN CLIFTON, Libellant and Appellant,
vs.
A QUANTITY OF COTTON, Brower & al., Claimants, Appellees.
} Bond for Costs.

701 Know all men by these presents, that we, David S. Draper and John E. Devlin, are held and firmly bound unto the above named claimants and appellees in the sum of two hundred and fifty dollars, to be paid to the said claimants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the seventeenth day of March, in the year of our Lord one thousand eight hundred and
702 fifty-nine.

Whereas the above named libellant hath prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above entitled suit by the judge of the district court of the United States, for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named libellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall
703 be and remain in full force and virtue.

DAVID S. DRAPER, [SEAL.]
JNO. E. DEVLIN. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 17th day of March, 1859, before me.

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

David S. Draper and John E. Devlin, being duly sworn, each deposes and says that he resides in the city of Brooklyn, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

DAVID S. DRAPER,
JNO. E. DEVLIN.

Sworn to this seventeenth day of March, A. D. 1859, before me.
GEO. W. MORTON,
U. S. Com'r.

The sufficiency of the sureties to the within bond approved.
N. Y., 7th March, 1859.
(Signed) SAM'L R. BETTS,
District Judge.

704 Filed this 17th day of March, 1859.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit.

The petition of appeal of John Clifton respectfully shows:
That one John H. Brower filed his libel in the district court of the United States for the southern district of New York, against the brig Water Witch, claiming damage for injuries to
705 cargo.

That said brig was attached, and the appellant appeared and bonded said vessel; that said court proceeded to hear said cause, and did decree that the libellant therein should recover against the said vessel the sum of five hundred and eleven $\frac{47}{100}$ dollars for such damage, which decree the appellant claims to be wholly erroneous.

Wherefore the petitioner prays that the said circuit court
706 may proceed to hear anew the said cause, and to reverse and annul said decree, and that the same may be so heard anew on new pleadings and proofs, and right and justice administered in the premises.

BEEBE, DEAN & DONOHUE,
For Appell't.

Endorsed: 12. 58. 79. U. S. Circuit Court. Brig Water Witch ads. John H. Brower. Beebe, Dean & Donohue, for app'lt.
707 Filed 17th March, 1859.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit.

The petition of appeal of John Clifton respectfully shows:
That William H. Sheldon filed his libel in the district court of the United States for the southern district of New York,
708 against the brig Water Witch; that the appellant appeared and claimed said vessel; and such proceedings were thereupon had, that the court decreed and decided that the libellant recover of the said vessel the sum of twelve hundred and twenty-four $\frac{30}{100}$ dollars, which decree the appellant alleges is entirely erroneous, and should be reversed.

Wherefore the petitioner appeals to said circuit court, and
709 prays that said court may proceed to hear said cause anew, on new pleadings and proofs, and to reverse and annul said decree, and to render justice in the premises.

BEEBE, DEAN & DONOHUE,
For Appell't.

Endorsed: 12. 59. 76. U. S. Circuit Court. William H. Sheldon vs. Brig Water Witch. Petition of appeal. Beebe, Dean
710 & Donohue, for app'lts. Filed 17 March, 1859.

To the honorable the Circuit Court of the United States for the southern district of New York, in the second circuit.

The petition of appeal of John Clifton respectfully shows:

That the libellant filed his libel in the district court
711 of the United States for the southern district of New York, in the second circuit, against a quantity of cotton, claiming freight thereon.

That such proceedings were thereupon had, that the said cotton was attached, and the court, on hearing, decreed that the libel should be dismissed with costs, which decree the libellant claims to be erroneous in all its parts.

Wherefore the libellant prays that the circuit court afore-
712 said may proceed to hear the said cause anew on new pleadings and proofs, and to reverse and annul the said decree, and to render justice in the premises.

BEEBE, DEAN & DONOHUE,
For App'lt.

Endorsed: 12. 64. 77. U. S. Circuit Court. John Clifton, ag't a quantity of cotton. Pet. appeal. Beebe, Dean & Donohue, for lib'l'ts. Filed 17 March, 1859.

Endorsed: U. S. Circuit Court, southern dist. of New York. In admiralty. John H. Brower et al. vs. The brig Water Witch, &c., John Clifton, clm't, appellant.

William H. Sheldon, libl't and appellee, vs. The same, Jno. Clifton, clm't and appl't. John Clifton, libl't and appellant, vs. A quantity of cotton, Brower et al., clm't and appellees. Apostles.

C. Donohue, proct. for appel't in 3 suits, 76 Wall st., N. Y.

Filed Mch. 22, 1859.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Monday, the third day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN H. BROWER, Lib'nt and Appellee,
vs.
THE BRIG WATER WITCH, &c., Clm't and Ap'nt.

WILLIAM H. SHELDON, Lib'nt and Appellee,
vs.
THE BRIG WATER WITCH, Clm't and Appellant.

JOHN CLIFTON and al., Lib'nt and Appellee,
vs.
A QUANTITY OF COTTON, &c., Clm't and Appellant.

The appeal in this case coming on to be heard, Mr. Donohue reads from Apostles on part of appellant.

Mr. Owen reads from Apostles on part of appellees.

Mr. Donohue argues on part of appellant.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN H. BROWER and al., Lib'lnt and Appellees,
vs.
THE BRIG "WATER WITCH," Cl'mt and App'lnt.

WILLIAM H. SHELDON, Lib'lnt and Appellee,
vs.
THE BRIG "WATER WITCH," Cl'mt and App'lnt.

JOHN CLIFTON and al., Lib't and App'ts,
vs.
A QUANTITY OF COTTON, Cl'mt and Appellee.

The appeal in this case being stil on hearing, Mr. Owen argues on part of appellees; Mr. Evarts is heard in reply.

Cur. adv. vult.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN H. BROWER and others, Lib'lnts and Resp'dts,
vs.
THE BRIG "WATER WITCH," her Tackle, &c.,
JOHN CLIFTON, Cl'mt and Appellant.

This cause having been brought to a hearing upon the appeal of the claimant from the decree of the district court dated 19th June, 1858, after hearing E. H. Owen, of counsel for the libellants and respondents, and Mr. Evarts and Mr. Donohue, of counsel for the claimant and appellant; and it appearing that this court has pronounced a decree in favor of the said claimant, in a certain cause of his against the cotton, and which was heard at the same time with this action, for the freight and primage thereon, in the aforesaid decree credited, it is therefore ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, does order, adjudge, and decree*d*, that the aforesaid decree of the district court be, *the* and the same is hereby, modified, and that the libellants and respondents do recover against the said brig Water Witch, her tackle, &c., and against the stipulators, the sum of $793 81, being the damages to the cotton in the said decree mentioned and adjudged, without deducting the amount of freight therein mentioned, together with interest thereon from the 23d August, 1854, and also their costs in the said district court taxed at $392 07, amounting at the date of this decree to the sum of one thousand four hundred seventy-one dollars and twenty-seven cents, together with the costs of this appeal, taxed at $91 98, and which said damages and costs in the whole amount to the sum of $1,563 25; and that unless the last mentioned sum be paid within the time allowed by law and the rules and practice of this court, that a summary judgment be entered in this court for the amount last above stated against John Clifton, claimant, and John E. Develin and David S. Draper, stipulators and sureties on appeal, and the libellant and respondent have execution to collect the same according to law and the course and practice of this court.

S. NELSON.

Endorsed: U. S. Circuit Court. John H. Brower and others, lib'lnt and resp'dt, vs. The Brig Water Witch, &c., John Clifton, cl'mt and appellant. Decree. Owen & Vose, lib'lnt's proctors. Filed Oct. 15, 1859.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

WILLIAM H. SHELDON, Lib'lnt and Resp'dt,
vs.
THE BRIG "WATER WITCH," her Tackle, &c.,
John *Clayton*, Claimant and Appellant.

This cause having been brought to a hearing upon the appeal of the claimant from the decree of the district court, dated June 19th, 1858, after hearing E. H. Owen, of counsel for the libellant and respondent, and Mr. Evarts and Mr. Donohue, of counsel for the claimant and appellant, after mature deliberation, and it appearing that the court has pronounced a separate decree in favor of said claimant, in a certain cause of his against the cotton, (and which was heard at the same time with this action,) for the freight thereon, which had been credited and allowed in the decree herein, it is ordered, adjudged, and decreed, and this court, by virtue of the power therein vested, does order, adjudge, and decree, that the decree of the district court, made and entered in this cause, be, and the same is hereby, modified, and that the libellant and respondent do recover against the said brig Water Witch, her tackle, &c., and against the stipulators, the sum of $2,130 71, being the damages to the cotton in the said decree mentioned and adjudged, (without deducting the amount of freight and primage therein, and for which an independent decree has been made as aforesaid,) together with interest thereon from the 23d day of August, 1854, and also their costs in the said district court, taxed at $123 02, amounting to the sum of $3,019 78, together with the costs of this appeal, taxed at $91 70, and which said damages, interest, and costs to the date of this decree, amount to the sum of $3,111 48; and that unless the last mentioned sum, with interest, to be paid within the time allowed by law and the rules and practice of this court, a summary judgment be entered in this court against John Clifton, claimant, and John E. Develin and David S. Draper, stipulators and sureties on appeal, for the last above mentioned sum of $; and that the libellant and respondent have execution to collect the same according to law and the course and practice of this court.

S. NELSON.

Endorsed: U. S. Circuit Court. William H. Sheldon vs. The Brig Water Witch, &c. Decree. Owen & Vose, lib'lnt's procts. Filed Oct. 15, 1859.

At a special term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

JOHN CLIFTON
vs.
A QUANTITY OF COTTON.

This cause coming on to be heard on the appeal of the libellant therein, on hearing William M. Evarts, esq., and Charles Donohue, for appellant, and E. H. Owen, esq., for appellee, and mature deliberation being had in the premises, it is now ordered, adjudged, and decreed, that the decree of the district court herein be reversed with costs, and that the libellant recover herein, for the freight of said cotton, the sum of twenty-three hundred and thirty-eight $\frac{06}{100}$ dollars, with costs to be taxed, and that John H. Brower, claimant of a portion of said cotton, pay to the libellant the *the* sum of five hundred and eighty-three $\frac{84}{100}$ dollars besides costs, being the freight on the part claimed by him in this suit, and that the claimant, Henry Sheldon, pay for the proportion of the cotton claimed by him in this suit the sum of seventeen hundred and fifty-four dollars and twenty-two cents, $1,754 22, besides costs, and that unless the said respective amounts are paid within the time prescribed by the rules of court, that a summary judgment be entered against the respective stipulators for the said cotton, for the amount so payable by the respective portions of the cotton.

S. NELSON.

Endorsed: U. S. Circuit Court. John Clifton vs. A quantity of cotton. Decree. Beebe, Dean & Donohue, for app'l'nt. Filed Oct. 15, 1859.

To the honorable the Supreme Court of the United States of America.

The petition of appeal of , respectfully showeth:

That heretofore, and on or about the 24 day of August, 1854, William H. Sheldon filed his libel in the district court of the United States for the southern district of New York, claiming to have an alleged lien for damage to cargo against the brig Water Witch enforced, which vessel the appellant, John Clifton, claimed. That thereafter an answer was duly filed, taking issue on such libel, and the cause was duly heard in said district court, by a decree thereof, on the 19th day of June, 1859. The said court adjudged and decreed that the libellant recover against said vessel and the claimant $1,224; that the appellant duly prosecuted his appeal from said decree to the circuit court of the United States for the southern district of New York, in the second circuit, and the same was duly heard in said court; and that thereafter the said circuit court did order, adjudge, and decree, that said decree of the district should be increased, and made the sum of $3,120, with costs.

That your petitioner respectfully insists that the said decree is erroneous, and he appeals from the said decree, and each and every part thereof, and prays that the Supreme Court of the United States may proceed to hear the said cause anew on new allegations and proofs, and to reverse and annul said decree of the said circuit

court, and to restore to the appellant all rights which he has lost by reason of said decree.

BEEBE, DEAN & DONOHUE,
For Appellant.

JOHN CLIFTON, *Appellant.*

We admit due service of the within petition. Dated Oct. 27, 1859.

OWEN & VOSE,
Att'y for Sheldon.

Filed Oct. 27, 1859.

Circuit of the United States of America for the southern district of New York, in the second circuit.

WILLIAM H. SHELDON, Libellant and Appellee,
vs.
THE BRIG WATER WITCH, &c., John Clifton, Claimant, Appellant.
} Bond for Costs.

Know all men by these presents, that we, John E. Develin and D. Gilmartin, are held and firmly bound unto the above named William H. Sheldon in the sum of six thousand dollars, to be paid to the said William H. Sheldon; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly, by these presents. Sealed with our seals, and dated the twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas the above named John Clifton has prosecuted his appeal to the Supreme Court of the United States, to reverse the decree rendered in the above entitled suit, by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named John Clifton shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JNO. E. DEVELIN, [SEAL.]
D. GILMARTIN. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 27 day of Oct., 1859, before me.

O. R. STEELE, [SEAL.]
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

John Devlin and D. Gilmartin, being duly sworn, each deposes and says that he resides in said district; that he is worth the sum

of eight thousand dollars over and above all his just debts and liabilities.

JNO. E. DEVLIN,
D. GILMARTIN.

Sworn to this 27th day of Oct., A. D. 1859, before me.
O. R. STEELE,
Notary Public.

The sufficiency of the above surety approved. Oct. 27, 1859.
SAM'L R. BETTS.

Filed this 27 day of Oct., 1859.

By the Honorable Samuel R. Betts, judge of the Circuit Court of the United States for the southern district of New York, in the second circuit.

To William H. Sheldon:

Whereas John Clifton hath lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said William H. Sheldon, against the said the brig Water Witch, &c., and John Clifton, claimant, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court at the city of Washington on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the twenty-seventh day of October, in the year of our Lord 1859, and of the independence of the United States the eighty-fourth.

SAM. R. BETTS.

BEEBE, DEAN & DONOHUE,
Proctors for Appellant.

We admit due service of the within citation. Dated Oct. 27, 1859.

OWEN & VOSE,
Att'y for Sheldon.

Filed Oct. 27, 1859.

To the honorable the Supreme Court of the United States of America.

The petition of appeal of William H. Sheldon, appellant, respectfully showeth:

That heretofore, and on or about the first day of September, 1854, John Clifton filed his libel in the district court of the United

States for the southern district of New York, claiming to recover freight on a quantity of cotton, &c., said to contain 269 bales, &c., which cotton was separately claimed by the above named appellant and John H. Brower, and another. That thereafter an answer was duly filed, taking issue on such libel, and the cause was duly heard in said district court by a decree thereof, on the 19th day of June, 1858. The said court adjudged and decreed that the said libel be dismissed with costs; that the said John Clifton duly prosecuted his appeal from said decree to the circuit court of the United States for the southern district of New York, in the second circuit, and the same was duly heard in said court; and that thereafter the said circuit court did order, adjudge and decree that said decree of the district should be reversed, and that the said John Clifton recover against the claimants the sum of $2,338 06, with $586 79, amounting in all to the sum of $2,924 85, of which sum the court decreed that your petitioner should pay more than $2,000.

That your petitioner respectfully insists that the said decree is erroneous, and he appeals from the said decree and each and every part thereof, and prays that the Supreme Court of the United States may proceed to hear the said cause anew on new allegations and proofs, and to reverse and annul said decree of the said circuit court, and to restore to the appellant all rights which he has lost by reason of said decree.

OWEN & VOSE,
For Appellant.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Burnett J. McCafferty, being duly sworn, says that he did, on the 28th day of November, 1859, serve a copy of the foregoing petition of appeal upon Charles Donohue, esq., proctor for John Clifton, the respondent in this action, by delivering such copy to and leaving the same with the said Charles Donohue, esq., personally, at his office at No. 76 Wall st., in the city of New York.

B. J. McCAFFERTY.

Sworn to before me, November 28th, 1859.

[L. S.] JOSEPH H. GRAY,
Notary Public.

Filed Nov. 29, 1859.

Circuit Court of the United States for the southern district of New York.

A QUANTITY OF COTTON, said to contain 269 bales, and 9 bags of wool, William H. Sheldon, one of the clm'ts and appellants,
ads.
JOHN CLIFTON, Libellant and Respondent.

Know all men by these presents, that we, Henry Sheldon, of the city of Brooklyn, and Cornelius V. R. Goodyear, of the city of New York, are held and firmly bound unto the above named John Clifton, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said John Clifton, his executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the first day of November, in the year of our Lord one thousand eight hundred and fifty-nine. Whereas the above named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HENRY SHELDON, [L. S.]
C. V. R. GOODYEAR. [L. S.]

Sealed and delivered, taken and acknowledged, this 9th day of Nov'r, 1859, before me.

[L. S.] JOSEPH H. GRAY,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss.

Henry Sheldon and Cornelius V. R. Goodyear, the above named obligors, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

HENRY SHELDON,
C. V. R. GOODYEAR.

Subscribed and sworn to this 9th day of November, 1859, before me.

[L. S.] JOSEPH H. GRAY,
Notary Public.

Endorsed: U. S. Circuit Court. John Clifton. Bond on appeal. A quantity of cotton, &c., ads. Owen & Vose, appel'ts proctors.

Approved Nov. 10, 1859.

CHAS. A. INGERSOLL.

Filed Nov. 9, 1859.

Citation.

By the Honorable Charles A. Ingersoll, one of the judges of the Circuit Court of the United States, for the southern district of New York, in the second circuit.

To John Clifton:

Whereas William H. Sheldon, one of the claimants of a quantity of cotton, &c., has lately appealed to the Supreme Court of the United States, from a decree lately rendered in the circuit court of the United States, for the southern district of New York, in the second circuit, made in favor of you, the said John Clifton, against the said William H. Sheldon, and has filed the security required by law: you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the tenth day of November, in the year of our Lord 1859, and of the independence of the United States the eighty-fourth.

CHAS. A. INGERSOLL,
U. S. Dist. Judge.

OWEN & VOSE,
Pro. for Appellant.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Burnett J. McCafferty, being duly sworn, says that he did, on the 28th day of Nov., 1859, serve a copy of the foregoing citation upon Charles Donohue, esq., attorney and proctor for John Clifton, therein named, by delivering such copy to and leaving the same with the said Charles Donohue, esq., personally, at his office at No. 76 Wall st., in the city of New York.

B. J. McCAFFERTY.

Sworn to before me, Nov. 28, 1859.

[L. S.] JOSEPH H. GRAY,
Notary Public.

Filed Nov. 29, 1859.

Filed 23d December, 1859.

Wm. C. Bryant & Co. Printers, 41 Nassau Street, cor. Liberty.

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U. S. Circuit Court.

The Brig "Water Witch," John Clifton,
Claimants,
ads.
William Sheldon.

The case was originally commenced in the district Court of the United States for the Southern district of New York, for damages alleged to have been sustained by a quantity of cotton shipped in Texas. The facts are, that Clifton, the owner of the vessel, chartered her to Cochran & Hall, of New Orleans, to go to Indianola and thence to Boston and New York, with a full cargo below and on deck, the cargo to be delivered within reach of vessel's tackle; that the vessel went to Indianola and there took on board all the cargo furnished her by Cleveland, the agent of Cochran & Hall; that Cleveland had made a contract with Mitchel for the conveyance of cotton; that no bills of lading were signed by the captain or owner of the vessel; that on the voyage the cargo received damage, which it is alleged was by the negligence of the vessel. This is denied. The District Court decided in favor of the libellant, and the claimant appealed on that appeal for the causes appearing in the apostles, the decree was increased.

Points.

First.—The libellants, Sheldon & Co., show no title or interest in the cotton to sustain their libel.

1. They were not owners or shippers of the cotton.

2. The letters of advice from Forbes the forwarder, carry no authority to demand or receive the cotton, except for and in the name of the owners.

3. They are not assignees of any contract, by bill of lading or otherwise, on the part of the vessel or its owners, which brought them into any relation of contract with, or claim against the vessel or its owners.

4. They made no advances upon faith of any bill of lading, or other contract of the vessel, and there is no evidence that their advances, in whatever shape, exceed the value of the cotton as it came to their hands.

4. The whole right or claim for damage is still vested in the owners of the cotton, and the relation of these libellants to those owners, would not bar the latter from an independent or subsequent suit.

For these reasons, irrespective of the merits of the controversy, the libels for damage should be dismissed.

Second.—The owners and shippers of the cotton, (supposing the libellants to represent them,) have no claim

for damages against the vessel or its owners, unless such damage arises from some breach of contract with, or duty towards the shippers, obligatory on the vessel and its owners.

No such contract or duty can arise, unless entered into or assumed by the owners of the vessel, directly or through some authorized agent.

I. The only contract which the owners of the vessel entered into, touching the carriage of cargo homeward, was contained in the charter-party between them and COCKRAN & HALL, of New Orleans, represented at Indianapolis by Cleveland.

The material terms of this charter-party were:

(1.) That the charterers were entitled to *the whole vessel, including the deck*, for the return voyage, and the shipowners were bound to take such cargo as the charterers should furnish, filling the whole vessel, including her deck, and could take or seek no other cargo.

(2.) That the port of loading was Indianola, (not Lavacca,) and the charterers were bound to furnish the cargo there alongside the vessel.

(3.) That the charter-money for the whole capacity of the vessel, *was a round sum*, so that the rate or amount of freight was no measure of the vessel's earnings, and of no concern to her owners.

II. This contract was entirely fulfilled by the vessel and her owners.

(1.) The vessel was at Indianola, ready to receive cargo to her full capacity under and on deck.

(2.) The charterers furnished a cargo of cotton, de-

livered alongside the vessel, under deck and on deck.

(3.) The charter-party, by an express hiring of the deck, put the extraordinary risks of deck-loading at the risk of the charterers.

(4.) The vessel brought the cargo to New York, and was ready to deliver to whosoever had a right to receive on payment of freight.

(5.) The vessel, by means of bills of lading, had not been brought into any contract subordinate or collateral to the charter-party, and, consequently, the charter-party constituted the whole term both of cantract and duty, in respect of the cargo by which the vessel and its owners were bound.

(6.) This involves two consequences—1. That the accountability was only to the charterers, and 2, only for violation of, or default in, the charter-party.

These libels do not pursue, nor the proofs establish any such accountability.

Third.—The contract of May 9th, 1854, upon which, or by means of which, the vessel and its owners are sought to be made accountable to these libellants, or their alleged consignors, was never made by them, never adopted or acted upon by them, was never known to them, and neither its terms, nor in its purport or object, imports any contract with, or obligation of the vessel or its owners.

1. The vessel, its owners or master, were not at Indianola or Lavacca when the contract was made, and were not represented there.

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2. They had no power or right to make any contract for homeward freight, being engaged in advance to, and having freight in advance secured from, the charterers.

3. Mitchell had no employment for, or authority from, the vessel or its owners. His existence, even, was unknown to them.

4. Mitchell was the agent or broker of the charterers, who being bound for the charter-money for the homeward voyage, and obliged to furnish cargo, had an interest to obtain a freight and a right to make such profit of it as they might.

5. There is no pretence, upon the evidence, that Mitchell ever assumed or professed any other action or agency than getting a freight to be ready for the vessel, and agreeing to take it. This he might well do for the charterers, and there was neither false pretence nor indiscretion in such conduct.

6. The contract itself is entirely clear of any agency for or implication of the vessel. Forbes trusted Mitchell entirely; he alone was bound by the contract; he was known in his person, his residence, and his business; the vessel was absent, and he had no evidence to show, and showed none, of authority from anybody.

7. It was competent for the charterers to make such contract, as they saw fit, with shippers, and they would be bound by it. But the vessel they had no authority to bind to any contract, and to it they could look only for fulfilment of the contract of the charter-party. They could take cargo from shippers on terms made with them, but could put it into the vessel only on terms made with it.

8. For instance, the charterers could agree to take

cargo from Lavacca and lighter it down to Indianola; the vessel was only bound to take cargo alongside at Indianola. The charterers might agree to take it at as low a rate as they pleased; the vessel would receive and enforce the charter freight. The charterers might agree to be responsible for freight on deck as if under deck; the vessel would be responsible only as for deck freight so contracted.

Can it be pretended that, upon any evidence in this cause, the *Water Witch* would have been liable for the loss of or damage to this cargo on board the lighter, from causes not excused by perils of the sea?

Fourth.—But, if the contract of May 9th, 1854, in any way affected the vessel or its owners by way of contract or duty, no breach of contract or duty thereunder has been shown by the libellants.

1. The vessel took proffered cargo to the extent of its capacity, stowing its hold full, and then taking a deck load. If the shippers were unwilling to ship cargo on deck, subject to all the risks of such lading, and the contract with Mitchell entitled them to under-deck lading of the whole quantity named, they should have withheld cargo, and sought indemnity for not taking cargo.

   The whole evidence shows that neither Mitchell nor the captain ever took any load on deck except as such, and of course at the risk of the shipper.

2. Any intendment against the vessel and owners from the rate of freight for the whole being uniform, and so of under-deck cargo, fails because the vessel did not receive the freight as a measure of its earnings which were fixed by the charter-party. The vessel only *collects* this freight by its lien on cargo and freight for the charter money.

3. The vessel brought the cargo, and was ready to make right delivery of it on payment of freight.

4. The damage was either country damage or sea damage. For the former, the vessel is not at all responsible—for the latter, only from want of skill or care in stowage, and then only to the extent to which such want of skill or care has produced damage.

5. As the vessel gave no admission of good order on receipt of cotton, as by all the evidence it appears that the cotton was badly damaged on lading on board, and as the voyage shows marine disaster, which accounts for all the sea damage, the burden is on the shippers to show both bad storage and damage therefrom.

6. The evidence shows sea-damage to have been local and limited, and wholly such as the sea perils would occasion as the proximate cause.

7. The evidence shows no want of care in either of the only two particulars suggested, viz., inadequate or unskilful dunnage, and improper disposition of the bales themselves.

Fifth.—The decree below disposes of the questions on the merits upon a merely general view, and without attention to the actual predicament of the vessel, the cargo, and the relations of the parties to each.

1. It treats the vessel as carrier of cargo under general maritime contract and liability, and holds it responsible upon the principles governing such contract

and liability as responsible for lading on deck as if under deck.

This assumes the whole case in controversy.

Sixth.—As to the cargo on deck, it being under the charter-party at the shippers' risk, all the incidents of the sea voyage to which it is thus exposed, and at the shipper's risk.

Seventh.—As to the cargo under deck, if it should seem that any proof has been made of damage not referable either to the bad condition of the cotton when laden, *and its necessary consequences*, or to the marine disasters proved, there may need to be a reference upon principles to be fixed by this Court.

Eighth.—The Circuit clearly erred in increasing the claim of the libellant on their damage; there was no appeal by them, and the Circuit could not increase the damage.

Ninth.—The decree below should be reversed.

C Donohue
Of Counsel for ap

SUPREME COURT

OF THE UNITED STATES.

WILLIAM H. SHELDON, Libellant and Respondent,

ads.

JOHN CLIFTON, Claimant of the Brig Water Witch, Appellant.

Respondent's Brief & Points.

ABSTRACT OF THE CASE.

This is an appeal from the decree of the Circuit Court of the United States for the Southern District of New-York, made on the 15th October, 1859, in favor of the libellant.

The libel was filed in the District Court of the same district, the 29th August, 1854, by the libellant, against the brig "Water Witch," claiming to be the consignee of and interested in 202 bales of cotton, which had been shipped on board of that vessel at Lavacca, Texas, to be transported therein from thence to New-York, and there delivered to the libellant, on payment of freight, and which the libel alleges was greatly injured by bad stowage, and other acts, omissions, negligence, want of care and attention thereto on the part of the vessel. (*Libel*, p. 4, fols. 16—32.)

The answer (which is not printed in the case, but which is to the same effect as that on page 25) put in

issue the various allegations of the libel, and alleged affirmatively that the "contract mentioned in the libel did not, nor could in any wise bind the said vessel, nor was the same authorized or assented to," and the same had expired.

This cause, with two others, one against the vessel for damage to other portions of the cotton belonging to another party, and the other by the owner of the brig against the *entire cargo*, to recover freight and primage, (the record of which appear in the printed case,) were tried together, before his honor, Judge Hall, (p. 31,) who afterwards decided that the vessel was liable for the "sea damage" to the cotton consigned to the libellant.

An interlocutory decree was accordingly entered, referring it to a commissioner, to ascertain and report the amount of such damage. (Fol. 641.)

Upon the reference, the parties *agreed upon the amount of such "sea damage,"* (fol. 658,) and the commissioner made his report accordingly; (fol. 652;) upon the coming in of which, a final decree was entered for the damages so ascertained, deducting therefrom the amount of freight chargeable upon the libellant's cotton. (Fols. 675, 682.)

The claimant appealed from this decree (and the decrees in the other cases) to the Circuit Court, and the three causes were again tried together before his honor, Mr. Justice Nelson, who modified the decree below, and decreed the whole amount of the damages, without deducting the freight on the cotton. (*Decree*, pages 137, 138.)

The claimants appealed from this decree to this court. The other cases have been terminated, and this is the only one of the three mentioned in the printed case which remains undisposed of.

FACTS.

The following is a general outline of the facts appearing in proof:

John Mitchell, of Lavacca, after applying to various persons to furnish the vessel with a cargo, (fol. 360,) entered into an agreement, in writing, on the 9th May, 1854, with R. M. Forbes, of that place, whereby it was, in substance and effect, agreed that Forbes should ship, and the vessel should receive on board, three or four hundred bales of cotton, to be transported therein from thence to New-York, at a freight of one and a quarter cents a pound and primage. The cargo was to be placed on board of the vessel free of charge to the shipper. (Fol. 18.)

The vessel was not there at the time such agreement was made, but she arrived at Port Lavacca about one week afterwards. In accordance with such agreement, Forbes thereupon delivered to a lighterman, employed and paid by Mitchell, to be transported from Lavacca to and put on board the vessel which lay at Powderhorn Wharf, some twelve or fifteen miles below, 269 bales of cotton, including the 202 bales in controversy in this suit. (*Case*, fols. 333, 337, 654.)

The lighterman, upon receiving the cotton on board his lighter, gave receipts therefor, in the usual form, acknowledging the receipt thereof in good order and condition, (except as to some ropes and torn bagging,) and he delivered the same in like good order on board the vessel. (*Lighterman's Receipts*, pp. 101, 102; fols. 570, 572. *Test.* fols. 369, 370.)

No objection was made at the time the cotton was re-

ceived on board as to its condition, except as to some missing ropes and some torn bagging. (Fol. 343.)

After it was received on board, some portion was thrown off upon the wharf, where it lay some time, exposed to the weather.

About 100 bales of the entire lot, including a portion of the cotton in question, were carried on deck, upon which the sailors did the ship's work, without any covering except some sails. (Fols. 179, 180, 135, 139.)

The remainder of the cotton was stowed in the hold, the ground tier being laid with the flat side down upon the sand which was used for ballast. (Fol. 176, &c.)

After the cotton was so shipped, bills of lading were made out by Forbes from the ship's receipts to be signed. No objection was made to their form, except that there was no provision in them allowing the cargo to be carried on deck. The shipper insisted that, by the terms of the contract, it was to be carried under deck. (*Bills of Lading*, pp. 96, 97, 98, 100, 114. *Test.* p. 82, fols. 376, 378.)

The master refused to sign the bills of lading so presented, and the vessel sailed with the cotton on board without signing these or any other bills of lading therefor. The shipper thereupon transmitted the bills of lading (which had been so presented to be signed) to the respondent, the consignee therein named, together with letters of advice instructing him to recover the cotton, and to proceed against the vessel for damages. (*Letters*, fols. 631, 634. *Test.* fols. 160, 223.)

The respondent acceptedt he consignment; made advances on the faith thereof; and, when the vessel arrived, he demanded the cotton, and it was delivered to him as consignee. He was addressed and recognised by the master as the consignee, entitled to receive the cargo mentioned in the unsigned bills of lading; the freight

bills were rendered to him, as the person liable to pay the same. (*Case*, fols. 160, 162, 223.)

It does not appear from the evidence that the shipper knew that any portion was to be carried on deck; at any rate, he did not know it until after the bills of lading had been presented, when he insisted that they had no right to carry it there.

The whole shipment, including the 202 bales in question, was badly damaged on the voyage by sea-water, improper stowage and want of proper care. After being discharged, the cotton was examined, and an estimate made of the damages, distinguishing country damage from "sea damage."

The claimant alleges that the vessel was under charter, by which he was allowed to carry cargo on deck, but it does not appear that the shipper had any notice of such charter before or at the time of shipment.

POINTS.

FIRST.—The respondent was the consignee of the cotton in question, and entitled not only to receive the same, but also to maintain this action for the damage which it sustained on the voyage to New-York.

I. No reasonable doubt could be entertained upon this subject if the bills of lading, which were transmitted by the shipper to the respondent, had been signed by the master of the vessel, or by some person lawfully authorized.

Lawrence *vs.* Minturn, 17 *How.* 100.
McKinlay *vs.* Morrish, 21 *How.* 343.

II. The fact that the bills of lading were not so signed does not, under the circumstances of this

case, affect the question, for the respondent was in fact the consignee, and was so recognised and treated by both parties.

1. The bills of lading and the letter of instruction enclosing the same, which were sent to the respondent by the shipper, constituted a legal and valid consignment.

2. The master, at or about the time the cargo was shipped, saw the bills of lading, which were presented to him to be signed, and knew that the respondent was to be the consignee. He made no objection thereto, but acquiesced therein; for upon arrival at the port of destination, he addressed him as such, delivered him the cargo, and demanded his freight and primage thereon.

3. A bill of lading, duly signed by the master, is not essential to a legal and valid consignment. Goods may be consigned verbally, as well as by writing.

   If bills of lading were necessary, then those sent, although unsigned, were sufficient. The master was in fault in not signing them when presented, and in leaving port without delivering proper bills of lading for his cargo.

The Peytona, 2 *Curtis' R.* 26, 27.

III. Even admitting that the respondent was not a consignee created in the customary way, still he was the agent of the shipper, and expressly authorized "to recover the cotton, and proceed against the vessel for damages," (fol. 633,) which authority, coupled with his interest in the cotton,

by reason of the advance made thereon, (fol. 160,) entitled him to maintain this suit.

Houseman *vs.* The North Carolina, 15 *Peters*, 40, 49.
Fritz *vs.* Ball, 12 *How.* 466.
McKinlay *vs.* Morrish, 21 *How.* 343.
Lawrence *vs.* Minturn, 17 *How.* 100.

His acts in bringing this suit have been communicated to and approved by the shipper and the parties interested in the cotton, and a judgment in this case will be a good defence to any action which might be brought by the shipper or owner for the same cause.

SECOND.—Having received the cotton on board for the purpose of transportation, the vessel became obligated for its proper stowage and protection during the voyage.

I. The agreement between Mitchell and the shipper was valid, and when the cargo was delivered to the vessel it became binding upon the vessel, and fixed the terms of the shipment.

Although it does not contain all the terms commonly inserted in bills of lading, yet it is in no wise inconsistent therewith, and it therefore carries with it, by implication, all the common law obligations respecting the stowage of the cargo, &c.

Whether, in making such agreement, Mitchell acted as agent of the vessel or for the charterer, is immaterial. All his acts were consistent with a simple agency for the vessel, and if he was acting for the charterer the fact was not made known to the shipper.

II. Even if there had been no agreement of any kind, still the vessel, by receiving the cargo, came under the usual common law obligation in regard to the stowage and care thereof.

In the absence of any express agreement, the law determines the duty in regard to the stowage and carriage of the cargo.

THIRD.—Such obligations, whether created by the contract or existing at common law, required the cargo to be carried under deck, and to be properly stowed and protected during the voyage.

I. This is the fair and legal construction of the contract, for although it is silent as to the place where the cargo is to be carried, still it clearly implies that it was to be carried under deck. Such is the legal effect of bills of lading where nothing is mentioned on the subject.

Vernard *vs.* Hudson, 3 *Sumn. R.* 405.

II. And this was, no doubt, the intention of the parties, as is manifested by the fact, that *under deck* freight was charged, and to be paid upon the *entire cargo.*

The Peytona, 2 *Curtis' Rep.* 21.

Freight upon cargo carried upon deck is always less than upon that which is carried below, or under deck. (Fols. 133, 167, 315.)

The shipper testifies that he understood the agreement as requiring the cargo to be carried under deck. (Fol. 374.)

There is no evidence of any contrary understanding by the master of the vessel.

III. If there was any agreement allowing the cargo to be carried on deck, it was incumbent upon the claimants to establish the same by competent evidence, which he has failed to do.

1. Admitting, for the argument, that the *charter-party* allowed cargo to be carried on deck, still, as the shipper had no notice or knowledge thereof, he is not bound thereby, and such charter should therefore be laid entirely out of the case.

2. The words, "according to the capacity of the vessel," as contained in the agreement, do not import a right to carry any portion of the cotton therein mentioned upon deck.

The capacity of a vessel is what she will contain within, *i. e.*, *under her decks.* (*Webster*, "Capacity." *Test.* fols. 226, 374.)

IV. In the absence of any express agreement upon the subject, the law determines the question between the parties, and requires the cargo to be carried under deck.

The Rebecca, *Ware Rep.* 188.
The Paragon, *Ware Rep.* 326.

V. The testimony in reference to a *usage* for vessels to carry cargo on deck was inadmissible.

1. It was contrary to the express agreement of the parties upon the subject, and therefore inadmissible.

2. In the absence of any such express agreement, it was contrary to what the *law* determines as the duty, and therefore equally inadmissible.

VI. But even if such evidence were admissible, still the testimony fails to establish such usage; on the contrary, it shows affirmatively the entire absence of any usage upon the subject.

The mere fact that vessels carry cargoes on deck proves nothing, for it may have been according to the express understanding of the parties, or the carrier may have taken upon himself the risk of doing so in violation of his obligations.

FOURTH.—This agreement and legal obligation on the part of the vessel, in regard to the stowage and proper care of the cotton, were violated; the cargo was improperly carried on deck; it was badly stowed; and the carrier was guilty of negligence in the care thereof during the voyage.

I. It was improper to carry any portion of this cotton on deck, where, as it is clearly proved, a portion was carried. (Fol. 177.)

II. It was, moreover, badly stowed, even upon deck; for,

1. It had not sufficient and proper dunnage underneath to allow the water, breaking over and upon the vessel, to pass off freely without becoming absorbed by the cotton. (Fol. 140.)

2. It was stowed upon the *flat* side, instead of the edge, as it should have been, in order more effectually to resist the water.

3. It was not sufficiently covered to protect it

from the rain and injury by the sailors working thereon during the voyage.

It was at most only covered with sails, whereas it should have had boards also laid over it, upon which the work could have been done without treading out the bagging. (Fols. 179, 180, 135, 139.)

III. That portion which was carried *under deck* was also improperly and badly stowed.

1. There was no sufficient or proper dunnage to keep it from the bottom and sides of the vessel, and from the water and dampness of the hold. (Fols. 177, 178.)

The dunnage was sand, over which, just under the hatches, but not elsewhere, there may have been a few boards.

Sand was bad dunnage, by reason of its liability to choke the pumps, and also because it retains the water, making mud, and creating excessive dampness. (Fols. 179, 210, 213, 215.)

Such was, in fact, the effect in this case; the lower tier was wet up from 1½ to 2 feet high. (Fols. 155, 170, 193, 215.)

The ropes and bagging on the *under side* of the bales were, in consequence, very much rotted. (Fol. 215.)

2. The lower tier of bales was improperly stowed on the flat side, which absorbs more water than if stowed on the side. The reason is stated by the witness, Parker. (Fol. 176, &c.

3. Proper and sufficient care was not taken to keep the hold free of water.

There is no evidence that the pumps were attended to, or any effort made upon

the subject. It was incumbent upon the claimant to produce testimony showing the efforts to save the cargo from damage.

FIFTH.—These acts and omissions of duty on the part of the vessel were the cause of serious damages to the cotton, which the respondent claims to recover in this action.

I. The District Court decided, and which was affirmed by the Circuit Court, that the vessel was liable for whatever *sea damage* the cotton had sustained, which is all that the respondent has ever claimed.

II. That the cotton did sustain *sea damage* was clearly and positively admitted on the proceedings before the Commissioner to ascertain the amount of such damages.

The respondent on that occasion claimed that the evidence entitled him to a report for a certain amount, which the claimant disputed, and insisted that the "sea damage" did not exceed $2,130 71, which he was "willing and consented to have reported as the 'sea damage,' and the said offer was duly, and by way of compromise, accepted" by the respondents, and the Commissioner so reported.

See *Commissioner's Report*, p. 122, fol. 658.

III. The question, therefore, is simply whether or not, under the facts and circumstances as proved, the courts below erred in holding that the vessel was liable for such "sea damages."

1. It is insisted that there was a violation and neglect of duty in regard to the care and stowage of the cargo, in the particulars mentioned under the fourth general point, and for that the vessel became liable for the damages thereto.

2. There is no doubt that the cotton was delivered in an exceedingly wet and damaged condition, (fols. 177, 193,) and this is sufficient to cast the burden of proof upon the claimant to account for such damage in a way to exempt the vessel from liability.
This he has failed to do.

(*a.*) The evidence fails to show any authority to carry the cotton upon deck, when it became wet by sea water.

(*b.*) It fails to show that the sand ballast and the stowage in the hold was proper.

(*c.*) It fails also to show why so much water was allowed to accumulate in the hold.

The stormy weather which the vessel is said to have encountered, causing the vessel to leak, was an ordinary incident to every voyage, and should have been anticipated and guarded against.

The Reeside, 2 *Sumn.* 567, 571.

The witnesses are silent as to the nature or character of the storm. Not one of them, excepting the master, speaks of having encountered any

storm. No protest has been put in evidence, and there is no evidence tending to show any efforts to free the vessel from water. Nothing showing that the pumps were in order or even used.

3. The vessel was liable, under the circumstances, for all damages, except such as arose from the "act of God." The water which accumulated in the hold was not simply an act of God, but it arose from the "fault or negligence of man."

The Rebecca, *Ware R.* 188.
Crosby *vs.* Grinnell, 9 *Leg. Obs.* 281.
2 *Greenl. Ev.* p. 212, § 219.
The Reeside, 2 *Sumn.* 267.

4. The question as to the condition of the cotton when shipped may now be regarded as immaterial, since the respondent is adjudged to be entitled to the sea damages only, which have been ascertained in the manner before stated. If the cotton was wet or damaged when it came aboard, the term "sea damage" excludes all such damages, and also country damages, and the damages arising therefrom, developed in the course of the voyage.

All this was litigated before the Commissioner, and the amount of "sea damage" proper was adjusted by compromise, which is conclusive.

5. But, if material, then it is insisted that the weight of testimony shows that the cotton, when shipped, was in dry shipping order.

(*a.*) The lighterman testified, and so his receipts show, that when he received

it on board his lighter, and delivered it to the vessel, it was dry and in good shipping order, except that there were some torn bagging and some missing ropes—a thing not unusual. See also the testimony of

Armstrong, fol. 337, 338.
Forbes' Test. " 367, 368.
Henry, " " 297, 298.
Pierpont," " 413.
Sanders, " " 312, 320.

(*b.*) Five witnesses on the part of the respondents, who saw and handled it, say that it was dry and in good shipping order, against four, who having no such opportunity of judging, undertook to say that it was not.

(*c.*) But if it was wet, it became so after its actual delivery to the vessel. There had been no rain for some weeks, and all had been placed on board the brig before any rain came on, except about twenty bales, which were covered on the lighter. (Fols. 339, 346, 369, 414.)

(*d.*) It was not in the bad condition alleged when it was received, or it could not have been handled and stowed with jack-screws in the way it was. This was admitted. (Fol. 158. See, also, fols. 191, 146.)

(*e.*) There was no complaint about its condition when received on board of the ship, except as to some torn bagging and missing ropes. (Fol. 343.)

(*f.*) Moreover, it was in the power of the claimants to have shown its condition more certainly by the mate's cargo book which he kept, and wherein it would have been his duty to note the condition; but such book was not produced. (Fol. 601.)

(*g.*) When the master was requested to sign the bills of lading presented to him, his only objection was, that they did not permit the cotton to be carried on deck. Nothing was said about the cotton being wet.

SIXTH.—The decree of the Circuit Court was correct in holding that the vessel was liable for the sea damage so ascertained as aforesaid, and should be affirmed, with costs.

E. H. OWEN,
Counsel for the Respondents.

3/3

UNITED STATES CIRCUIT COURT.

JOHN H. BROWER, *et al.*,

vs.

THE BRIG WATER WITCH.

WILLIAM H. SHELDON

vs.

THE SAME.

JOHN CLIFTON

vs.

A QUANTITY OF COTTON.

NELSON, C. J.—The libels in the two first cases were filed to recover damages for injuries to a cargo of cotton shipped in the brig Water Witch, from Lavacca, in the Bay of Matagorda, Texas, to this port, in May, 1854.

The libellants were the consignees of the cotton.

The libel in the third case was filed by the owner of the brig to recover the freight money. A special contract was made between the shipper, at Lavacca, and one Mitchell, who represented himself as the agent of the vessel. She lay at the port of Indianola, situate in the same bay as Lavacca, but several miles distant.

The cotton was carried on a lighter from Lavacca to the vessel. After it was delivered from the lighter, and received on board the vessel, the master refused to sign the bills of lading, upon the ground that the cotton was not in good order and condition, and, pending the dispute, he sailed for New-York with his cargo.

The shipper, on learning that the vessel had sailed without having signed the bills of lading, forwarded the bills unsigned to the consignees named in them, stating the circumstances. The consignees made advances upon the cotton. On the arrival of the vessel at this port, the master notified the consignees of the cotton and discharged his cargo, but in a very damaged condition. He also demanded his freight from them, the payment of which was refused, and the above suits afterwards instituted by the respective parties.

It is proper to state, further, that the brig was under a charter-party from the owners to a firm in New-Orleans, and that Mitchell, with whom the contract was made for the shipment of the cotton, represented this firm. By this contract the shipper was to deliver the cotton at Lavacca, to be received on lighters by Mitchell, and placed by him, at his expense, on board of the vessel, to be carried to New-York, for the freight of one and a quarter cents per pound.

The agent also objected to the bills of lading, because they did not contain a stipulation that part of the cotton might be shipped on deck. The shipper refused to admit such a stipulation, as it was not contained in the agreement between the parties, which was not in writing.

First.—We perceive no well-founded objection to the right of the consignees to maintain their suits. They were the persons to whom the cotton was shipped, and were recognised by the master as the proper parties to receive it, and to whom it was delivered by him and the freight demanded. They had made advances upon it in the usual way, and had the same interest in the cotton as if the bills of lading had been duly executed.

Second.—We should have no difficulty in this case in holding the carrier to the common law liability in the shipment of cotton, even if no bill of lading or other agreement had been entered into by the master, or his consent to receive it on board his vessel, and carry to the port of destination, subjected the ship to this liability.

But in addition to this, the agent of the charterers in whose service the brig was at the time, and who were interested in procuring a cargo, entered into a written agreement, fixing the terms upon which the shipment was to be made. The vessel was bound by it, and although it does not contain the stipulations usual in bills of lading, it carries with it by implication the common law obligation of common carrier.

We may entirely lay out of view the charter party between the owner and the firm in New-Orleans, as the shipper in this case had no notice of it; and if, therefore, there had been any thing in this agreement repugnant to the charter party, it could not be permitted to effect injuriously his interests.

Third. Having disposed of these somewhat technical questions we come to the main question in the case, and that is, whether or not the damage to the cotton was the natural if not the necessary effect of its condition at the time of shipment developed in the course of the voyage, or produced by the dangers of the navigation, without any fault of the ship, or whether all or any part of it is attributable to bad stowage or absence of proper care and attention on the part of the master.

Some one hundred bales of the cotton were shipped on deck. It has been argued that the right thus to ship it is fairly to be inferred from the terms of the agreement between the shipper and agent of the vessel. We think not. It is also argued that there was a usage of the trade between the ports of Texas and New-York on the shipment of cotton, which justified the master in shipping it on deck. We think that the proof fails altogether to establish any such usage. The freight he paid was the usual rate for cotton under deck.

It has further been strongly argued that the whole

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damage to the cotton, as disclosed on discharging at this port, was the effect of the country damages existing at the time of shipment, or was produced by a storm which the vessel encountered on the voyage. The evidence in this case is very conflicting upon these questions, and difficult, indeed impossible to be reconciled. The court below came to the conclusion that, according to the weight of it, the cotton had sustained sea damage, for which the vessel was responsible.

We are inclined to concur in this conclusion. The testimony is pretty strong that the cotton was badly stowed, and also that sufficient attention was not paid to the sea water in using the pumps. The cotton was very wet when discharged from the hold of the ship.

The court below, in the case of the libel of the owner to recover freight, denied the same, after applying so much of the money awarded for damage to the cotton as equalled the freight money. This, we think, was erroneous. The consignees had each filed his libel to recover his damages, and has succeeded. It is true each set up his answer to the suit for freight damage to the cotton, by way of abatement of the sum claimed.

But these parties could not thus split up the claim for damages by applying a portion in extinguishing the freight money, and then ask a decree for the excess over this sum. If they insist upon recovering damages in an independent suit, they cannot apply any portion of them by way of abatement, as the suit for the freight money. The damages are an entirety.

We must, therefore, reverse the decree in the court below in the case of Clifton *vs.* A Quantity of Cotton, &c., *and direct a decree to be entered for the libellant for the full amount of the freight money, and interest, with costs.* And as the full amount of freight, at the rate of 1¼ cents per pound, will be recovered, the error will be corrected in the court below, reducing the freight of the portion of the cotton carried on deck to deck freight, and at the same time holding the brig responsible in the transportation of it under deck.

The decrees in the other two suits are affirmed, with costs.

SUPREME COURT OF THE UNITED STATES.

No. ~~162.~~ 84.

THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, CLAIMANTS OF THE STEAMBOAT NEW PHILADELPHIA, APPELLANTS,

v.

PATRICK F. BRADY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

G. S. GIDEON, Printer, No. 511 Ninth Street, Washington, D. C.

Story on Bailments 495-501
Angel on Carriers 295

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United States of America, Southern District of New York, *ss.*

I, Kenneth G. White, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the said United States the eighty-fourth.

KENNETH G. WHITE,
Clerk.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Saturday, the 27th day of March, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: the Honorable Samuel R. Betts, District Judge.

PATRICK F. BRADY
v.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c. } 13. 468.

1856. August 25th. The libellant files his bill in the words and figures following, to wit:

United States District Court, Southern District of New York.

In Admiralty.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York:

The libel of Patrick F. Brady, of the city of Philadelphia, against the steam-tug "New Philadelphia," her tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges as follows:

First. That your libellant, before and at the time of the collision hereinafter mentioned, was the owner and proprietor of the barge

called the "Owen Gorman," her tackle, apparel, and furniture, which said barge your libellant used and employed in transporting freight between Richmond, in the State of Pennsylvania, and Brooklyn, in the State of New York.

Second. That on the 12th day of April, 1856, the said barge, being under the command of Patrick Campbell, the master thereof, departed from Richmond, in the State of Pennsylvania, bound for Brooklyn aforesaid, having on board a cargo of two hundred and seven $\frac{1}{25}^{0}$ tons of red ash coal; that the said barge was then tight, staunch, and strong, well manned, tackled and apparelled, and appointed, and was *was* in every respect fit for the voyage she was then about to undertake, having her cargo well and sufficiently stowed and secured.

Third. That on the morning of the 17th of April, 1856, said barge with eleven others was towed from the Delaware and Raritan canal, at New Brunswick, into the waters of the North river, by the said steamboat, New Philadelphia; that the said steamboat dropped one of the said barges which she had in tow, at the foot of Washington street, in the said North river, and another of the said barges at the foot of Hammersley street, in the said river, and then entered the East river with the remainder of said barges in tow, steering and heading across the same towards the Atlantic dock, in the city of Brooklyn, where she was to drop and leave another of said barges; that she ran across the tide, which was then running a strong ebb; that when the said steamboat, with the said barges in tow, approached the said dock, for the purpose of dropping one of the said barges, as aforesaid, the schooner Financier was lying abreast of and *abreast of and* at said dock.

Fourth. That the barge that the said steamboat was to drop was on the larboard side of said steamboat, and that the "Owen Gorman" was the exterior boat on the starboard side of said steamboat, and was the outermost barge of the tow on said starboard side towing abreast:

That the said steamboat steered in with the said barge in tow close to the said dock, and then was steered in such a manner that the Owen Gorman was thereby swung and driven with great force and violence into and upon the said schooner Financier; that when the persons in charge of the said schooner Financier, saw the steamboat and barges swinging into and driving upon her with such force, they threw over the side of the said Financier a wooden fender, to ward off the impending collision, and that said fender was forced and crushed into the said Owen Gorman just forward of midships, on the starboard side, cutting in her planks and making a large hole in her side, through which hole the said barge became filled with water and sank with her cargo aforesaid, and the same then and there became a total loss to your libellant; that the sinking and collision of the barge aforesaid was occasioned by the negligence, inattention, and

want of proper care and skill, as herein aforesaid, on the part of the New Philadelphia, her master and crew, and not from any fault, omission, and neglect on the part of the Owen Gorman, her master, and crew.

Fifth. That immediately upon the sinking of the Owen Gorman as aforesaid, the said libellant caused notice thereof to be given to the owners of the steamboat New Philadelphia, and also caused to be served a marine protest, in due form, upon the said owners and upon the consignees of the said coal.

Sixth. That, subsequently, in order that the collision might be attended with as little loss as possible, your libellant, at the request of the agent of the company who owned said steamboat, employed William J. Babcock, a wrecker who had been previously employed by the said company upon various occasions of a similar character (and whom they recommended to your libellant as a fit and proper person), to raise the said barge and put her afloat. That said Babcock contracted to do so for $450, it being expressly understood and agreed between your libellant and said agent, that should the hole which occasioned the sinking of the barge be where your libellant represented and expected it would be found, that the company were to be responsible for all damages done to said barge.

Seventh. And your libellant further says, that the said Babcock raised or partially raised said barge and towed her to some place near Red Hook Point and there beached her upon the flats, in such a manner that the tide rose and fell in her; and it was then ascertained that the hole was in the starboard side of the barge, little forward of the midships. That the said Babcock proceeded, without notice to and without the consent or authority of your libellant, to discharge the said coal from the said barge, and had the same stored in the yard of the consignees of the same, and then notified your libellant that he had advertised the said barge and coal for sale to pay off his lien, to which he, as a wrecker under the wrecking act, claimed to be entitled. That said barge and coal were by him sold accordingly. That at said sale the said consignees of the coal purchased the same for $3 per ton, and that one Henry J. Vroom purchased the said barge for the sum of $350.

That when your libellant was first notified of said sale, he came immediately to New York to protect his interest and to pay the said Babcock for his charges and expenses for raising the said barge, and that your libellant finally arranged and settled said account by paying to Mr. Babcock the sum of $450, the amount to be paid to him for raising said barge, and also the further sum of $299 96 for his expenses in unloading, storing, and carting and shovelling said coal, and for the wharfage, dockage, and towage of said barge; and by paying the sum of $236 12 to the consignees for the deterioration in the value of said coal, which had been ascertained by referees, appointed one by the said consignees and one by your libellant, of

which said several acts the owners of the said steamboat had due notice.

And your libellant further states, that said barge was so injured and disabled by the force and violence with which she was struck and sunk by the said steamboat, as to render it necessary to take it to the dry dock for repairs, at a time when her services were particularly valuable to her owners, and that your libellant, in consequence of the barge having been sunk and injured, has sustained damages for repairs to the said barge and loss of all her fixtures, for her loss of time, for expenses of her master and crew, and other losses, to an amount exceeding two thousand dollars, which said damage was occasioned by the negligence, want of skill, and improper conduct of the persons navigating said steamboat New Philadelphia, and not by or through any fault, negligence, or improper conduct of the persons on board the Owen Gorman,—her master and crew.

Tenth. That, since the said Owen Gorman was so sunk and damaged, your libellant has applied to F. J. Kester, the agent of said steamboat New Philadelphia in New Brunswick, and also to J. F. Cooley, the agent of the said steamboat New Philadelphia in the city of New York, and requested them to settle with your libellant for the damages sustained by him as above mentioned, but the said agents have refused and still refuse to do so.

Eleventh. That the said steamboat New Philadelphia is now lying in the port of New York, and within the jurisdiction of this court.

Twelfth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore your libellant prays that process, in due form of law according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamboat New Philadelphia, her tackle, apparel, and other furniture, and that all persons having any interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages as aforesaid, and that the said vessel may be condemned to pay the same, and that your libellant may have such other or further relief as in law and justice he may be entitled to receive.

C. D. BURRILL,
Libellant's Proctor.

P. F. BRADY.

Sworn to this 25th day of August, 1856, before me.

GEO. W. MORTON,
U. S. Commissioner.

Indorsed, 13, 468. U. S. District Court. Libel. Patrick F. Brady against The Steamboat New Philadelphia, her tackle, &c.

C. D. BURRILL,
Libellant's Proctor.

Filed, August 25th, 1856.

District Court of the United States, for the Southern District of New York.

Filed the 25th day of August, 1856.

Stipulation for Libellant's Costs entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed in this court, on the 25th day of August, in the year of our Lord one thousand eight hundred and fifty-six, by Patrick F. Brady, against the steam-tug New Philadelphia, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that process *in rem* may issue against said steamboat, and the said libellant and Bernard Kelly, surety parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and each of them is bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the Appellate Court.

P. F. BRADY,
BERNARD KELLY.

Taken and acknowledged, this 25th day of August, 1856, before me,

GEO. W. MORTON,
U. S. Commissioner.

Southern District of New York, *ss.*

Bernard Kelly, party to the above stipulation, being duly sworn, doth depose and say that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

BERNARD KELLY.

Sworn to this 25th day of August, 1856, before me,
GEO. W. MORTON,
U. S. Commissioner.

Recorded the 25th day of August, 1856.

G. F. BETTS,
Clerk.

Southern District of New York, *ss.*

The President of the United States of America, to the Marshal of the Southern District of New York, greeting: Whereas, a libel hath been filed in the District Court of the United States, for the Southern District of New York, on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-six, by Patrick F. Brady *v.* The Steamboat New Philadelphia, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned, and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the sixteenth day of September next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the honorable Samuel R. Betts, judge of the said court, at the city of New York, in the Southern District of New York, this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-six, and of our independence the eighty-first.

GEO. F. BETTS,
Clerk.

C. D. BURRILL,
Proctor for Libellant.

In obedience to the within monition, I attached the steamboat New Philadelphia, &c., therein described, on the 29th day of August, 1856, and have given due notice to all persons claiming the same, that this court will, on the 16th day of September inst. (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

AB. T. HILLYER,
U. S. Marshal.

Dated September 16th, 1856.

Indorsed: Vol. 13, page 468. Southern District of New York, United States District Court. Patrick F. Brady *v.* The Steamboat New Philadelphia, her tackle, &c. Monition returnable Sept. 16th, 1856. C. D. Burrill, Proctor for Libellant. Filed Sept. 16th, 1856. I hereby depute John Helm to execute the within process. Dated August 25th, 1856. Ab. T. Hillyer, U. S. Marshal. Foot Christopher.

United States District Court, Southern District of New York.

PATRICK F. BRADY
v.
THE STEAMBOAT NEW PHILADELPHIA.

It is consented that the owners of the said steamboat may give security for said vessel for damages and costs in the amount of (penalty) $4500; and that Cambridge Livingston and Franklin Cooly, on justifying in five thousand dollars, may execute the stipulations; and that said vessel be discharged, upon said security being given, and the sureties justifying as above.

C. D. BURRILL,
Libellant's Proctor.

Dated September 1st, 1856.

Indorsed: 13, 468. U. S. District Court. Patrick F. Brady *v.* The Steamboat New Philadelphia. Consent. Cambridge Livingston, Proctor. Filed Sept. 2, 1856.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the second day of September, in the year of our Lord one thousand eight hundred and fifty-six,

Present: The Honorable Samuel R. Betts, district judge.

THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, owners of the Steamboat NEW PHILADELPHIA, &c.,
asm.
PATRICK F. BRADY.

And now, Cambridge Livingston, intervening for the interest of The Camden and Amboy Railroad and Transportation Company, appears before the honorable court, and makes claim to the said steamboat New Philadelphia, her tackle, &c., as the same are attached by the marshal, under process of this court, at the instance of Patrick F. Brady; and the said Cambridge Livingston aver that the said company was in possession of the said steamboat, her tackle,

&c., at the time of the attachment thereof, and that the company above named are the true and bona fide owners of the said steamboat, her tackle, &c., and that no other person is the owner thereof; and the said company are the true and lawful bailees thereof, as owners; wherefore, they pray to defend accordingly.

CAMBRIDGE LIVINGSTON.

Sworn to and subscribed this 2d day of September, A.D. 1856, before me.

GEO. W. MORTON,
U. S. Commissioner.

CAMBRIDGE LIVINGSTON,
Proctor for Claimants.

Indorsed: Vol. 13, No. 468. United States District Court, for the Southern District of New York. The steamboat New Philadelphia, &c., The Camden and Amboy R. R. and Transportation Company, claimants, *asm.* Patrick F. Brady. Cambridge Livingston, Proctor for Claimants. Claim of The Camden and Amboy R. R. and Transportation Co. Filed the second day of September, 1856.

District Court of the United States, for the Southern District of New York.

Filed the second day of September, 1856.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed in this court, on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-six, by Patrick F. Brady, against the steamboat New Philadelphia, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamboat, her tackle, &c., may be condemned and sold to pay the demands of the libellant; and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands.

And whereas, also, a claim has been filed in said cause by The Camden and Amboy Railroad and Transportation Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulator undersigned shall be, and each of them is hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses, which shall be awarded against them by

the final decree of this court, or upon an appeal by the Appellate Court.

THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY,
By CAMBRIDGE LIVINGSTON.
FRANKLIN COOLY,
CAMBRIDGE LIVINGSTON.

Taken and acknowledged this 2d day of September, 1856, before me.

GEO. W. MORTON,
U. S. Commissioner.

Southern District of New York, *ss.*

Cambridge Livingston and Franklin Cooly, parties to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

CAMBRIDGE LIVINGSTON.
FRANKLIN COOLY.

Sworn to this second day of September, 1856, before me,
GEO. W. MORTON,
U. S. Commissioner.

Recorded the second day of September, 1856.
GEO. W. BETTS,
Clerk.

District Court of the United States, for the Southern District of New York. In Admiralty.

Filed the 2d day of September, 1856.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty-six, by Patrick F. Brady against the steamboat New Philadelphia, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the said steamboat, her tackle, &c., is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel, and by a consent signed by the proctor for the libellant it has been agreed to discharge the said vessel from custody on the claimants executing stipulations for costs, and value the latter in the sum of four thousand five hundred dollars, as appears from said consent now on file in said

court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their sureties, execution for the above amount may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any appellate court to which the above named suit may proceed, and upon notice of such order or decree to Cambridge Livingston, Esquire, proctor for the claimants of said steamboat, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY,
By CAMBRIDGE LIVINGSTON.
FRANKLIN COOLY,
CAMBRIDGE LIVINGSTON.

Taken and acknowledged, this 2d day of September, 1856, before me.

GEORGE W. MORTON,
U. S. Commissioner.

Southern District of New York, *ss.*

Cambridge Livingston and Franklin Cooly, parties to the above stipulation, being duly sworn, depose and say, and each for himself saith, that he resides in the city of New York, that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

CAMBRIDGE LIVINGSTON,
FRANKLIN COOLY.

Sworn to this second day of September, 1856, before me,
GEORGE W. MORTON,
U. S. Commissioner.

Recorded the second day of September, 1856.
GEORGE W. BETTS,
Clerk.

At a stated term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the second day of September, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable Samuel R. Betts, district judge.

THE STEAMBOAT "NEW PHILADELPHIA," her tackle, &c., THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, claimants, *ads.* PATRICK F. BRADY. } Vol. 13, page 468.

On filing a consent to stipulate, signed by C. D. Burrill, proctor for the libellant, and the terms being complied with, on motion of Cambridge Livingston, proctor for the claimants, it is ordered that the above-named vessel be discharged from custody.

Indorsed: Vol. 13, No. 468. United States District Court, for the Southern District of New York. The steamboat "New Philadelphia," and the Camden Railroad and Transportation Company, claimants, *ads.* Patrick F. Brady. Cambridge Livingston, proctor for claimants. Order to discharge. Filed the second day of September, 1856.

District Court of the United States, for the Southern District of New York.

PATRICK F. BRADY *agt.* THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c.

We hereby consent that a commission issue in the above action to R. P. Kane, Esq., counsellor-at-law, of Philadelphia, in the State of Pennsylvania, to examine upon oath, on interrogatories to be annexed to said commission, John M. Gauchy, C. N. Whittaker, Thos. Gorman, George A. Turbell, Patrick Laverty, John Campbell, William Murtagh, James Dougherty, James Rice, Bernard Armstrong, George Fisher, Thomas H. Riley, and Joseph Maxfield, of the same place, witnesses on the part of the libellant, and that the claimant have leave to join in said commission, and that the same be returned to the proctor of the libellant at his office, No. 51 Wall street, to be opened on one day's notice to the claimants' proctor. Either party to have the privilege of attending at such examination.

Dated December 13th, 1856.

CAMBRIDGE LIVINGSTON,
Attorney for Claimants.

Indorsed: District Court, 13, 468. Patrick F. Brady *agt.* the steamboat New Philadelphia. Consent to commission. O. D. Burrill, proctor. Filed Feb. 9th, 1857.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Monday, the 9th day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

Present, the Honorable Samuel R. Betts, district judge.

PATRICK F. BRADY
agt.
THE STEAMBOAT "NEW PHILADELPHIA," her tackle, &c. } 13, 468.

On reading and signing a consent signed by the proctor for the claimants, and on motion of Charles D. Burrill, proctor for the libellant, it is ordered, that a commission issue in the above action to R. P. Kane, Esq., counsellor at law, of Philadelphia, in the State of Pennsylvania, to examine upon oath, upon interrogatories to be annexed to said commission, C. M. Whittaker, Thomas Gorman, Patrick Laverty, John Campbell, William Murtagh, John M. Gauchy, George A. Turbell, James Dougherty, James Rice, Bernard Armstrong, George Fisher, Thomas Riley, and Joseph Maxfield, of the same place, witnesses on the part of the libellant; and that the claimants have leave to join in said commission, and that the same, when executed, be returned to the proctor for the libellant, at his office, No. 51 Wall street, New York, to be opened on one day's notice to the claimant's proctor, either party to have the privilege of attending at such examination.

(Indorsed.) Vol. 13, No. 468. United States District Court for the Southern District of New York. Patrick F. Brady *vs.* The Steamboat "New Philadelphia," &c., the Camden and Amboy Railroad and Transportation Company. C. D. Burrill, for libellant; Cambridge Livingston, for claimants. Order to issue commission to Philadelphia filed the ninth day of February, 1857.

District Court of the United States for the Southern District of New York.

PATRICK F. BRADY
agt.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c.

We hereby consent that the commission heretofore issued in the above-entitled cause to R. P. Kane, Esq., counsellor at law, of Philadelphia, in the State of Pennsylvania, to examine witnesses upon the part of the libellant, be reissued to the said commissioner, for the purpose of examining upon oath upon interrogatories, Patrick Campbell, of the same place, a witness on the part of the said libellant; said commission when executed to be returned to the proctor for the

libellant, at his office, No. 49 Wall street, to be opened on one day's notice to claimants' proctor.

Dated August, 1857.

CAMBRIDGE LIVINGSTON,
Proctor for Claimants.

(Indorsed) U. S. District Court, 13, 468. Patrick F. Brady *agt.* The Steamboat New Philadelphia. Consent to reissue commission. Filed September 1, 1857.

At a stated term of the District Court of the United States of America for the Southern District of New York, on Tuesday, the 1st day of September, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable Samuel R. Betts, district judge.

PATRICK F. BRADY
agt.
THE STEAMBOAT NEW PHILADELPHIA, THE CAMDEN AND AMBOY RAILROAD COMPANY.

A commission having been heretofore issued in the above action to R. P. Kane, Esq., counsellor at law, of Philadelphia, in the State of Pennsylvania, to examine on oath, upon interrogatories to be annexed to said commission, certain witnesses upon the part of the libellant, upon reading and filing a consent signed by the proctor for the claimants, on motion of Charles D. Burrill, proctor for libellant, it is ordered, that the said commission be reissued to the commissioner therein named, to examine on oath, on interrogatories to be annexed to said commission, Patrick Campbell, of the same place, a witness on the part of the libellant; and that said commission, when executed, be returned to the proctor to the libellant, at his office, No. 49 Wall street, New York, to be opened on one day's notice to the claimants' proctor.

(Indorsed) Vol. 13, No. 468. United States District Court for the Southern District of New York. Patrick F. Brady *agt.* The Steamboat New Philadelphia, &c. C. D. Burrill, libellant's proctor. Order to reissue commission filed the first day of September, 1857.

1856, September, 18th.

The claimants file their answer in the words and figures following, to wit:

In Admiralty: United States District Court, Southern District of New York.

To the Honorable Samuel R. Betts, judge of the District Court of the United States for the Southern District of New York.

The claim and answer of the Camden and Amboy Railroad and

Transportation Company, owners of the steamboat New Philadelphia, her tackle, &c., intervening for their interest therein, to the libel of Patrick F. Brady, alleges as follows:

First. That the claimants are and were, at the times in said libel mentioned, the owners of said steamboat Philadelphia.

Second. Said claimants admit that on or about the 17th day of April, 1856, the said steamboat had the said barge Owen Gorman, of which a man called Campbell was master, and ten other boats in tow, towing them from New Brunswick, New Jersey, to be left at different places in the cities of New York and Brooklyn.

But who are the owners of said barges, and when said barge left Richmond, and what amount of coal said barge was laden with, these claimants are ignorant, and on information and belief they deny that said barge was tight, staunch, and strong; and on like information and belief aver that said barge was unfit and unseaworthy for the transportation of the load of coal which was laden on board said barge at the time or for the voyage in which she was engaged.

Third. Said claimants, on information and belief, aver that the landing at the Atlantic dock in Brooklyn, where the injury described in the said libel is alleged to have occurred, was in manner as follows, namely: that said steamboat New Philadelphia, after having dropped or left six of the barges and boats of her fleet, proceeded from the North river into the East river with five barges or boats (including the said Owen Gorman), for the purpose of dropping or leaving them at their respective places of destination.

That said barge Owen Gorman was in the first tier of boats on the outside, and on the starboard side of the steamboat as the steamboat approached the said Atlantic dock from the westwardly, and headed up the East river, when the tide was running at about the first of the ebb.

That one of the boats on the larboard side of said steamboat was destined for said Atlantic dock, and it was necessary to drop or leave said boat there; and to do so, the said steamboat came to with the fleet, and with her starboard side nearest said dock, and alongside a sloop (and not a schooner) lying at said dock, which was a fit and the best and most suitable place to touch at.

That said steamboat and fleet was brought to alongside of said sloop with great care and gentleness.

And said claimants admit that a wooden fender was put out by some person on board said sloop to fend off said barge Owen Gorman; but whether or not said fender was forced or crushed into said barge, these claimants are ignorant, and therefore deny the allegations to that effect contained in said libel; and they admit that said barge did subsequently sink, but they are informed and believe that she did not sink until some hours after leaving the said dock; and on information and belief said claimants deny all the allegations contained in the third and fourth articles of said libel, which are not herein substantially admitted.

Fourth. And said claimants admit receiving notice that said barge had sunk, but they aver on information and belief that no notice or information of an injury having been done to said barge, or that said barge was in a sinking condition, was given to the master of the steamboat until after said barge had been left at her place of destination, which was not until about one hour or more after they had left the said Atlantic dock; and that the said barge was allowed by her master and crew, to sink with her cargo on board in deep water, and without any effort on their part to prevent the same, and without affording the master of the said steamboat any opportunity to endeavor to prevent the said barge sinking, or any damage to said barge or cargo.

Fifth. And said claimants, on information and belief, deny that said libellant employed William J. Babcock at the request of the agent of said claimants, but admit that said Babcock was recommended to said libellant as a fit person to raise said barge; but said claimants deny that said agent had any power to make any contract or admission on behalf of these claimants, which would or could render these claimants liable for any damage done to said barge, or for any expense incurred in raising her or growing out of the sinking of said vessel.

And these claimants, on information and belief, deny that any of their agents agreed with said libellant or with any other person that these claimants were to be responsible for any or all damage done to said barge, if a hole should be found in said barge where said libellant represented it would be found.

Sixth. And these claimants on information and belief aver that the damages and injury to the said barge and to its owner or owners as set forth in said libel were greatly increased by reason of the neglect and inattention of the master and crew, and of the owner and owners of said barge; and they further state that they are ignorant what damage was done or what expense incurred, or what repairs were made, or what the libellant did in the matter; but they deny that the damage or expenses were as great as it is alleged in said libel, and also deny that they are liable for any thereof.

Seventh. And said claimants further state that said barge Owen Gorman, at the time when as aforesaid and set forth in said libel was being towed by said steamboat under an agreement made by the master of said barge that said barge was to be towed at the risk of the master and owner of said barge.

And said claimants deny that they are liable for the damages and injury to the said barge Owen Gorman, set forth in said libel, or for any thereof or arising thereout.

CAMBRIDGE LIVINGSTON,
Proctor and Advocate.

Southern District of New York, *ss.*

Cambridge Livingston, being duly sworn, says, that the claimants of the steamboat New Philadelphia, viz., "The Camden and Amboy Railroad and Transportation Company," are a corporation chartered by the State of New Jersey, and reside out of the State of New York; and that deponent is the general proctor, attorney, and counsel for said company in the city of New York, and has a general knowledge of the matters stated in the foregoing answer, and that to the best of deponent's knowledge and belief said answer is true.

CAMBRIDGE LIVINGSTON.

Sworn to this 18th day of September, 1856.

GEO. W. MORTON,
U. S. Commissioner.

Indorsed: 13, 468. United States District Court in Admiralty. Patrick F. Brady *v.* Steamboat New Philadelphia. Answer. Cambridge Livingston, Proctor for Claimants. Filed Sept. 18, 1856.

United States District Court.

C. D. Burrill, proctor for libellant. J. E. Burrill, of counsel.
C. Livingston, for claimants.

PATRICK F. BRADY
agst.
THE STEAMBOAT NEW PHILADELPHIA.
THE CAMDEN AND AMBOY RAILROAD CO., claimants. } 13, 468.

Collision in East river, at Atlantic dock.

Tuesday, Feb. 16th, 1858.

Pleadings read.
Stipulation as to depositions of libellant read, p. 249.
" " " of Joseph Maxfield read.

Bernard Kelly sworn. Was on board barge Owen Gorman, in tow of steamboat, on the starboard side; went on board at Amboy; is stevedore and coal hoister; was in her at time of collision, on starboard side, next Brooklyn, on barge Owen Gorman; she was outside barge; there was one boat between her and steamer. The tug had came from North river, around Governor's Island, around Buttermilk channel, and across it to Atlantic dock. The tug was intended to go up East river, and was attempting to drop a barge at Atlantic dock; that barge was on larboard side of tow, but cannot specify her position. The tug came in across the tide, running out a strong ebb; and in the effort, the tug swung round and struck the Owen Gorman against schooner fast at dock with weight of whole tow. Two men on schooner ran and pushed a long stick as a fender between

tug and schooner; force of the junction pressed the stick out of their hands, and raised it perpendicularly between the two vessels. Blow and jar was very severe. Witness saw the stroke; was standing forward of midship cleet, about three feet from point where the fender struck; and as he saw it wrenched out of man's hands, witness started back to get out of way. The barge was forward of place where witness stood. The tug landed a barge and then started up East river with the residue of her tow, including the Owen Gorman, to Washington street, a mile or more above, where she was landed nicely; then found she was lowered into water. Witness went on her and into her hold, where he found the water up to his knees. She was hauled into dock, and there she sunk in about twenty minutes; found she was making water as soon as she was cast off from tug.

Afterwards found planks crushed in at place where stick struck her about width of two planks, and two or three feet long. The planks were broken, but nothing between Atlantic dock and place of landing; supposes the loading of coal prevented the water pressing in sooner.

Tow was swung round at Atlantic docks by the tide, and before the tug and tow entered it and wound them off; has known this barge a year or two. After landing boats at North river side, asked master of Gorman how she stood the service, and a few minutes before collision, how she stood the voyage; he said she was perfectly dry, and drew the pump in witness's presence, and it sucked perfectly dry; had unloaded her four times before, and never found any water in her; she was a sound and good boat.

Cross-examined.

Thinks the stick was about six inches through, as large as his hat, and six to eight feet long, like a fore and aft piece, to secure ship's hold; it was not round, but partly dressed, a kind of square; two men were engaged in putting it out when barge struck it; thinks one end of it was then in the water, but could not see that distinctly; it struck barge three feet forward of midship's cleet, which is nearer forward than aft. The other was a small vessel with two masts, not so large as barge. She lay outside of face of dock; cannot specify the precise point of dock, but towards upper end of dock, but above gap in dock.

The Owen Gorman was, he supposes, more than two feet out of water; the vessel she came against was higher out of water, being light; saw over her side the barge was struck, but could not see at what point.

Tug left off barge at end of pier; they did not come to; then found barge was making water; she was hauled in as fast as possible alongside the pier at which steamboats land; she sunk on lower side of

Washington pier, and none of persons on her left her till she sunk; saw she was injured, but never saw size of hole until wrecker had raised her; thinks her side planks were eight or ten inches width; had no conversation with captain at Jersey city about barge.

Patrick Daly sworn. Was master of barge Anna Lyon, one of the tow at time. She was inside of Owen Gorman; witness's boat, called Spur-boat, on larboard of tug, and nearest Brooklyn side; he was dropped off after Owen Gorman; saw the collision standing on deck of his boat; the tow coming from North river swung around and knocked against vessel at dock; cannot say what caused the tug to swing around; she came round pretty fast; tide was ebb and strong; blow was strong; a loud noise was running, and did not feel the shock; saw men putting out fender; cannot describe it particularly; all done quickly, and witness was trying to get to bow of boat; it happened about middle of day; tug was trying to land a boat from her larboard side.

Owen Gorman was landed very nicely by tug, which did not stop afterwards; witness came down and saw barge under water—hatches seen above water, floating around, but vessel wholly out of sight, under water.

Cross-examined.

Heard the barge had sunk before he went down to her; supposed barge was injured when the blow was given, and went to look at her but could see nothing; the fender was forced out of the hands of the men who put it out. Judge she was injured because of force of blow.

Daniel McCauly, sworn. Was on the barge, and in cabin, at time blow was received; felt the blow; dishes were knocked out of cabin closet, and gave witness a shock on his seat upon a bench; not severe enough to knock him off his seat; was on board when barge was cast off at Washington or Adams street, close to end of pier; line was cast off from her to end of pier; witness went on with tug; witness went on deck after blow, and looked over side of barge, but saw no hole in her.

John Campbell, deposition. Hand on barge; she was staunch and strong, p. 174. Vide page.

George A. Twibill, deposition. Seaworthy. Vide page.

Patrick Lafferty,	do.	do. Shipcarpenter.	Vide p.
Thomas Gorman,	do.	do.	Vide p.
William Murtagh,	do.	Conversation of capt. of tug.	Vide p.
Conrad M. Whitaker.	do.	Seaworthiness.	Vide p.
Patrick Campbell,	do.	Master of barge; facts of collision.	

Defence.

Robert Holman, sworn. Master of tug at time; had followed water 25 or 30 years, and most of the time in employment of claimants, and about 15 years between Brunswick and New York, all the time in steamboats, except 3 years in barges, about 15 years at different periods in tug vessels. Witness was at wheel in landing at Atlantic dock and Washington street. Went north of Governor's island, and across Buttermilk channel and the tide, three or four hundred yards below end of island (east face), then headed up against ebb tide and landed a barge, and what he considered a good landing; thinks tide was about slack in North river; run up along the docks two or three hundred yards, and alongside of vessel, and stopped tug, and then left the wheel (leaving pilot there), to attend to landing barge from larboard side; after landing her, continued up to Wall street, Brooklyn. Witness returned to wheel again; did not see the fender put down; it was an easy land with a little drift play on the boat. Stopped engine about 200 feet from the vessel at wharf, and headway of tug stopped three or four feet from her, when witness left the wheel; there was no headway at all on tow at time of collision; headway of tow was steered a little in towards vessel, and that caused her to come into the collision; it was that sheer which brought her against the vessel; thinks she was a sloop about thirty feet long, and higher than barge; never safe to put a wooden fender between vessels; is always liable to cause damage, because these towboats are weak, and fenders are apt to break them in. After landing Gorman at Washington street, went three or four piers to Bridge street, thence to Twenty-sixth street, after that came back past the Gorman two or two and a half hours after leaving Atlantic dock; no recollection of conversation with Murtagh. Had no notice from anybody before reaching Washington street from Gorman, that she was in any danger.

Cross-examined.

Witness gave no sheer to tow by his helm. Witness was on larboard side of tug astern, letting go the towboat when collision took place, and did not see fender put down, nor the striking of the vessels, nor did he feel the blow; was on upper deck of steamboat aft; gave the sheer to tug about fifty feet from vessel, ported his helm to come towards dock; ported helm about time he stopped his engine; cannot say which he did first. Tug was still in water, making no head or sternway at time of collision; she was making a slight sideway; thinks bow of tug was above vessel at dock when her way was stopped; cannot fix distance. Kept North river down, and came into Buttermilk channel below island.

Has before landed boats when wooden fenders were put out, but never by his orders; does not recollect of any one where a hole was

broken in the vessels by the fender; master of the Gorman came to Canal street that afternoon, and notified witness of sinking of barge; vessel drew not over three feet, and was higher than barge.

Redirect.

When vessel has fender put under her she would not break a hole under water in barge; fender would shoot under her and not break bottom; engine stopped 200 feet from vessel.

Garrett Van Arsdale, sworn. Pilot of tug, been eight years on water; was then in wheelhouse; captain left it to land boat after headway was stopped; headway of boat was stopped with a gradual sag on by tide; plenty of room to move in; saw fender put down when barge was about two feet from vessel; it was a round piece of timber, six feet long and six inches through to appearance, probably fifty feet from witness. Sometimes such movement will cause breaking in of boat, and oftentimes, if round, and vessels strong, it may roll along between them and do no harm; did not observe effect of this one; that would depend on headway of vessel; judges they landed the barge at Washington street in half an hour; supposes he saw barge at end of pier when he returned down with tug, some hour or two after, and remarked to captain of tug, that they had not yet hauled in the barge. Thinks tide was flood and nearly slack when they left North river. Barge was landed in usual way at Atlantic dock; consider it perfectly safe to Gorman to have her touch vessel above while landing boat from stern below; did not notice any shock or jar from the collision of two vessels.

Cross-examined.

Bow of tug ahead of vessel at dock when fender was put out; he thinks ten feet, and about same at time of collision, and bow of Gorman about ten feet astern of tug's; tug abreast of vessel when her headway stopped, or eight or ten feet above that; cannot say when headway of tug was entirely stopped, it was very short time, judges five minutes; tug did not get any sternway before collision; only motion she had was a side motion from sheer and sag of tide.

When barge hit with her bows she dropped down aside of vessel, side and side.

Redirect.

Does not think fender would injure barge if there is under water.

Wednesday, February 17th, continued.

Map of bay and harbor of New York in evidence.

(Geoney's) and Commissioners' map.

Witness. He landed barge at short pier (Washington street) below the long pier.

Re-cross.

Short pier is nearest Atlantic dock than longer pier is.

Isaac Rice, sworn. Engineer of tug; recollects landing at Atlantic dock; does not recollect any thing more than that; he stopped engine, reversed it, &c., in making the landing; witness was in engine room; was half an hour going from Atlantic dock to Washington street.

William J. Babcock, sworn. Is wrecker and lighterman, &c.; he raised barge Owen Gorman, April, 1856, foot of Washington street, Brooklyn, between long and short piers; saw two holes in her when she came out of the water; vessel was about nine feet from bottom of keel to top of deck. One hole in side of barge three or four feet below the deck, about six feet aft of middle cleet, and about three inches square. Another hole forward of that, about two feet and lower down, plank slived up six or eight inches, and then hole broke through; holes had appearance having been made by bolts sticking out of head of pier; does not appear to him that the holes could have been made by a fender placed between the two boats; been a wrecker about five years, a waterman thirty-three years. An upright fender, six inches in diameter, placed between two vessels, could not have produced either of these holes by pressing the two vessels together. If top of fender was pressed out towards barge, the hole, if any made by it, would be towards deck of barge and under water on the schooner, and not on the barge; there were two other holes under water, three holes on one side and two on the other at the bilges, where his chains took hold of her. Has examined end of short pier, and found two iron bolts sticking out of head of it; one two and a half to three feet under water, and about corresponding with place of holes in barge. One bolt in about centre of pier and the other nearer the bottom, or next low water mark, examined at low tide.

Cross-examined.

First found barge between the two piers, rather nearest the long one; the short one is lowest down. Thinks he first examined barge four or five days after the accident; has occasionally done work for claimants, and thinks was recommended for this job by one of their captains; Campbell had advertised for a wrecker; did nothing to her the first; beached her near Red point about a month afterwards; barge lay in ship till witness got her slung and ready to take her round Red point; that was about a fortnight after witness began work, and it was several days, four to six, after vessel was sunk. Slung her between two vessels on their chains, forward part of barge near midship cleet, about fifteen feet forward of the cleet. The

after chain was directly over the two holes *in* the barge. Had two steam-tugs and towed barge directly to Red point; it was nearly three before together on the beach; tugs towed her round the point, and then the barge swinging lowest got aground, and tugs left her there; the sloops which buoyed her remained supporting her, where at low tides she was screwed up, until at the end of about three weeks she was floated up and beached. Thinks he saw Kelly at barge before she was raised, and he or Campbell told witness where he would find the holes whilst she *was* under water; when raised witness found the holes about eight feet of place described there; they pointed out forward of cleet where he would find them, and discovered them two feet apart and eight feet of place they stated to be. A hand iron projecting out would *would* make such holes; but does not think a sharp corner of a square piece of timber like the fender would make such holes; his chains broke after got to Red point; barge low bow in; stern in thirty feet of water, and bow visible at *low* water; she was rather nearest the long pier; put one of his vessels between barge and long pier.

Thomas Elkins, sworn. Cumulative and passed by.

Benjamin B. Schweimer, deposition. Cumulative. Master of one of tow boats.

Vide page.

For libellant, in reply.

Edward Hayes, sworn. Master of barge Kate Hayes; she was in the tow fastened to stern of Owen Gorman; at time of collision was on starboard bow of his own boat; saw her strike the sloop first in flush of her bow against *vessel* at dock; can't say whether she was a schooner or sloop; then after first blow barge swung round and came on broadside and struck that vessel; witness's boat struck same vessel; his bow came against her also, but not to hurt anything; put fenders between them; the blow of barge Owen Gorman was pretty hard; was spoken of by others at time as one which would have done much damage if she was not a good boat. Thinks tug had a little headway on when she struck; dropped back after that a little; after tug got *into* Buttermilk channel she headed a little more towards the dock than up stream; thinks the vessel at wharf lay a little of the gap in the dock; witness held his barge by her tiller, so that she swung but a little after striking the vessel; it is customary to use wooden fenders on barges and also rope fenders; some say they are dangerous; witness does not know; they are, however, used in landing barges; fenders of some kind are always used. Saw master of barge try his pump within an hour before collision, and she *was* dry; it was while crossing bay; witness had wooden and rope fenders.

Cross-examined.

Barge was going ahead when she struck; does not know whether tug was moving ahead; supposes tide caused barge to swing; is sure sloop lay above gap at dock. Thinks barge left there was fastened on other side of tug.

Re-direct.

Witness ran forward before collision, because he thought vessels would strike. Witness used perpendicular fenders.

Bernard Kelly, again. There were two vessels lying at long pier, Washington street, *when* barge Owen Gorman was landed; she was dropped at stern of vessel lying there; Owen Gorman was trying to get into slip between long and short pier; passed line to long pier first, and then passed bow into pier, and she sunk when about half way up; did not go to short pier at all; pointed out to Babcock's men at Red point where holes were; he put over his boat-hook and scraped along and found it; water then a foot over deck; did not strike anything at Washington dock except stern of vessel lying at long dock; struck her slow, so as not to hurt anything: barge *struck* against nothing except the sloop and fender.

Cross-examined.

Fender was forward of midship cleet; knows that; calls short dock at Washington a *bulk*head and not a *pier*. There was a vessel unloading coal at short pier when the barge came to at long dock. Did not tell anybody that barge came to at long pier.

Patrick Daly, again. Customary on barges to use wooden fenders, rope, and cork, also usual to put *out* wooden fenders in landing barges; and it is usual to put wooden fenders to guard against schooners coming up, &c.

Edward Duffy, sworn. Went with Murtagh to see Captain Holman, and asked him how barge was sunk; Holman said he knew nothing of it till he returned to Canal street; saw fender put between vessels at Atlantic dock.

For Defence.

Wm. J. Babcock (again). Kelly told him barge landed at small pier. He was standing on long pier, and pointed out the place of landing on short pier, and described manner of landing.

Cross-examined.

That conversation was while he was engaged there in raising the barge.

Capt. Holman (again). He saw the line thrown from barge Owen Gorman to short pier and taken in; eddy tide pressed tug towards short pier, and turned her stern outside and swung it up.

Cross-examined.

Tug was stopped at Washington street about 5 minutes before reaching short pier, and eddy tide took him before getting up to dock; came up to about 25 to 30 feet from dock; barge came up with her bow heading directly to short pier. There was no vessel there.

James Denton (sworn). Witness was on deck of Owen Gorman at time she landed. It was at short dock. She went first to long dock, and could not land there. She drifted down below short dock 15 feet. Threw lines to short dock, and after being made fast there, captain of tug ordered her cast off, and it was done; then the lines were hauled upon, and she was pulled in. About a quarter of an hour getting up there from Atlantic dock.

Cross-examined.

Never talked with about this, except a month or more ago was asked by his lawyer where barge landed.

Thomas Elkins (again). Belonged to tug, but at time was on space between barge and tug, and as deck hand was assisting to let go the barge, and knows she landed at short pier; heading towards the short pier; fast was secured to short pier.

Cross-examined.

Has talked about the subject about three hours after accident, and sometimes since to captain of tug, and with some of the other hands, and more than once, two or three different times. Not employed on the tug now. Left her about four months after that. Not been in employment of Captain Holman since.

Mr. Livingston argues the cause for claimants.

Mr. J. Burrill " " libellants.

Briefs to be put in *cur adv. vult.*

The President of the United States of America to R. P. Kane, Esq., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you full power and authority, diligently to examine, upon their corporal

oaths or affirmations, before you to be taken, and upon the interrogatories hereunto annexed, John McGauchy, C. M. Whittaker, Thomas Gorman, George O. Twibell, Patrick Laverty, John Campbell, William Murtagh, James Dougherty, James Rice, Bernard Armstrong, George Fisher, Thomas H. Riley, Joseph Maffield, and Patrick Campbell, as witnesses, on the part of the libellant, in a certain cause now pending undetermined in the District Court of the United States of America for the Southern District of New York, wherein Patrick P. Brady is libellant, and the steamboat New Philadelphia, and the Camden and Amboy Railroad Company are respondents.

And we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to Charles D. Burrill, libellant's proctor, 51 Wall street, at the city of New York, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause indorsed on the envelope of the commission, by the usual mode of transmitting letters from Philadelphia to the city of New York.

Witness the Honorable Samuel R. Betts, judge of the District Court of the United States for the Southern District of New York, at the city of New York, this 9th day of February, in the year of our Lord one thousand eight hundred and fifty-seven, and of our independence the eighty-first.

GEO. F. BETTS,
Clerk of the District Court of the United States
for the Southern District of New York.
C. D. BURRILL,
Proctor for Libellant.

Instructions to Commissioners.

Annexed to the commission is an extract from the statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample

Instructions:

I. All the commissioners named in the commission, should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by the *commissioner* named therein.

III. The acting *commissioner* will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"*You do swear*, that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth. *So help you God.*"

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon, and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "*You do swear in the presence of the ever living God,*" and while so swearing, he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "*You do solemnly, sincerely, and truly declare and affirm,*" omitting the words, "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of *witnesses*, produced, *sworn* (or *affirmed*) and examined, the day of in the year one thousand eight hundred and at under and by virtue of a commission issued out of the District Court of the United States for the Southern District of New York in a certain cause therein depending and at issue between Patrick F. Brady, libellant, and the Steamboat New Philadelphia, &c., The Camden and Amboy Railroad and Transportation Company, respondents, as follows:

A. B. of (*insert his place of residence and occupation*) aged years and upwards, being duly and publicly *sworn* (or *affirmed*) pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows: First, *To the first interrogatory, he saith, &c.* [Insert the witness's answer.] Second, *To the second interrogatory, he saith, &c.*, and so on throughout.

If he cannot answer, let him say that *he knoweth not.*

V. If there be any cross-interrogatories, the witness will go on thus:

First, *To the first cross-interrogatory, he saith, &c.*, and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of 18 before

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be indorsed by the acting commissioners, in this manner:

"At the execution of a commission for the examination of witnesses, between Patrick F. Brady, libellant, and the Steamboat New Philadelphia, &c., respondents, this paper writing was produced and shown to (*insert the witness's name*) and by him deposed unto at the time of his examination, before

Commissioner.

VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto.

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 18 before

Commissioner.

X. The commissioner will make return on the back of the commission by indorsement, thus: "The execution of this commission appears in certain schedules hereunto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits, must be folded into a packet and bound with tape. The acting commissioners are to set their seals at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus:

To Chs. D. Burrill, Esquire, at No. 51 Wall St., New York.

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court *by one of the acting commissioners personally*, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath, before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following indorsement thereon:

"Deposited in the post-office, at this day of 18 , by me,

Commissioner."

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following indorsement:

"Deposited in the letter bag of the now lying at and bound for the port of New York, this day of 18 , by me,

Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon who will direct him as to its delivery.

United States District Court for the Southern District of New York.

Interrogatories to be administered to C. M. Whittaker, Thomas Gorman, George A. Twibell, Patrick Laverty, John Campbell, William Murtagh, James Dougherty, James Rice, Bernard Armstrong, George Fisher, Thomas H. Riley, James Joseph Maxfield, of Philadelphia, Pennsylvania, witnesses to be produced, sworn, and examined, in a cause pending in the above Court, wherein Patrick F. Brady is libellant, and the Steamboat New Philadelphia, and the Camden and Amboy Railroad Company claimants.

To be Administered to all the Witnesses.

First. What is your name, age, residence, and occupation? Are you acquainted with the libellant above-named?

To all the Witnesses, except Whittaker.

Second. Do you know the barge called the Owen Gorman, and if so, state how long you have known her? How and of what materials was she built? Was she well and strongly built, but if not, how otherwise?

To all the Witnesses.

Third. Have you any knowledge, and if so, what, in regard to the condition of the said barge, at the time she left Philadelphia for New York, on her voyage in the month of April last; if so, state whether she was then tight, staunch, and strong, and if not, how otherwise? Also state whether she was well manned, tackled, and apparelled and appointed, and fit for a voyage to New York with a cargo of coal, and if not, how otherwise?

To Thomas Gorman alone.

Fourth. Were you at any time, and if so, when, the owner of said barge? Did you sell the said barge to Patrick F. Brady, the above-mentioned libellant, and if so, state when she was sold? What was her condition at the time she was sold? Do you know whether any repairs were put upon said barge by said Brady, after you sold her, and if so, when, and what was the nature of such repairs?

To C. M. Whittaker alone.

Fifth. Do you know the said barge, and if so, when, how, and of what materials was she built? Was she well and strongly built, and if not, how otherwise? Did you put any repairs on the said boat in the fall of 1855, and if so, state when and what was the nature of such repairs, and what effect the same had upon the said vessel?

Sixth. To George Fisher, James Dougherty, James Rice, Bernard Armstrong, Thomas H. Riley, Joseph Maxfield.

Do you know when the said barge, Owen Gorman, left Richmond in the month of April last, and if so, for what place? What cargo has she on board? State the nature and quantity? By whom was it shipped, and to whom was it consigned, and what was the value of the coal per ton there? On what terms, as to freight, was the coal shipped? State the amount of freight, and by whom and to whom to be paid?

Seventh. To John Campbell alone.

Were you a hand on the Owen Gorman, on her voyage from Richmond to New York in April last? State what hands she had on board during such voyage, and the nature and quantity of her cargo? State when she left Richmond, and what route she took to New York, the time she reached, and the time she left New Brunswick? State when she was taken in tow by the steamer New Philadelphia, and for what place? State when she passed into the East river, and how many barges or boats she had in tow at the time? State on which

side of the steamboat the barge was, and describe also the position of the other barges immediately prior to the accident hereinbefore mentioned?

Eighth. To John Campbell alone.

Do you remember the circumstance of the barge being run against a vessel lying at the dock in the East river, while in tow by the steamboat? If so, state the time when and the place where the accident occurred? also, what the steamboat was doing, or trying to do, at the time? how she was heading at the time? and whether the steamer was bound up the East river, and if not, how otherwise? Was the tide flood or ebb, and was it strong or slack? Was *was* the vessel against which the barge was run, and where and how was she laying? Did the barge and the other vessels come together with force or not? If with force, state whether with much or little? Did the steamboat turn her bow up the East river before the collision, if so, state how soon before the collision, and whether she was close or not to the vessel at the dock when she turned? What was the occasion of the collision? Was the steamboat and the fleet brought around in a skilful and careful manner, if not, how otherwise? If you shall say that it was in an unskilful and careless manner, then state in what respect careless and unskilful? Could the collision have been avoided on the part of the steamer, if so, state how she could have landed the boat which was about to be dropped, without having brought the barge into collision, and if so, state how and in what manner, and by what means such object might have been attained and the collision avoided?

Ninth. To John Campbell.

In what part of the barge was she struck, and how and with what force was the blow given, and what was the result? was any, and if so, what injury done to the planks and sides of the vessel? Were there any holes made in the side, if so, state where they were? Did she take in any water after the injury, and to what extent? Was she filled with water? Did she sink? If so, state when and where she sank? After the barge was brought into collision, did the steamboat continue on her way with the barge, and if so, how far? Why did not the boat sink sooner than she did? While she was in tow of the boat, and after the collision, did the master and crew of the barge know in what condition she was, if so, were any steps taken by the master or crew of the barge to keep her afloat? Was any notice given to the captain of the steamboat about the condition of the barge after the collision? If not, state why such notice was not given, and also state whether the captain of the steamboat and those aboard knew in what condition the barge was? After the barge was released from the steamboat, were any, and if so what efforts made by

the captain and hands on board the barge to prevent her sinking, and if so, state what such efforts were; and if none were made, state why they were not made.

Tenth. To John Campbell.

State by whom and to whom the directions, in regard to the course and management of the barge, were given during the voyage? If you say they were given by the persons in charge of the steamer, state whether such directions were given to all the barges? When barges are in tow of steamboats, state by whom the management and movements of the barge are directed and controlled, and whether the captain of the barge is subject to the control of any one, and if so, whom, in respect to the course and management of the barge while being towed.

Were there any, and if so, what directions given by the persons on board the steamer to the barge, in regard to her course and management immediately prior to the collision?

Eleventh. To William Murtagh alone.

Did you have any interview with the captain of the New Philadelphia, in regard to the collision by which the Owen Gorman was injured? If so, state who was present at, and when and where such an interview took place, and what occurred? what cause did the captain assign, if any, for the collision, and what did he assign if anything for the sinking of the barge?

C. D. BURRILL,
Libellant's Proctor.

Settled by consent, subject to all legal objections.
Dated February 9th, 1857.

CAMBRIDGE LIVINGSTON,
Attorney for Claimants.

United States District Court for the Southern District of New York.

Cross-interrogatories to be administered to C. M. Whittaker, Thomas Gorman and George A. Terbell, Patrick Laverty, John Campbell, William Murtagh, James Dougherty, James Rice, Bernard Armstrong, George Fisher, Thomas A. Riley, Joseph Maxfield, witnesses of the part of libellant, Patrick F. Brady.

First cross-interrogatory. To C. M. Whittaker.

What is your business? If you state what materials the Owen Gorman was built of, and whether or not she was strongly built, state now what kind of knees she had, and how many, and how the knees

were made and put together. Were the knees in one piece, or in two or more? and state also if she had any keel, and its size, and whether there were any timbers other than plank in the Owen Gorman; and if yes, how many and where placed, and the size or sizes of them?

Second. To all the Witnesses.

If you state in answer to the 3d, or any other direct interrogatory, that you have any knowledge of the condition of the Owen Gorman, or her seaworthiness at the time or times referred to in said 3d direct interrogatory, state particularly how you got your knowledge, and what experience you have had in boat-building, and where? or in the strength or worthiness of boats of this kind?

Third Cross-interrogatory. To Thomas Gorman.

How old was the Owen Gorman? What did Patrick F. Brady allow you for her? Was it paid in money or by exchange? State all the particulars of the bargain, and whether or not you had any interest in her at the time when the accident occurred to her on the voyage in April last?

Fourth Cross-interrogatory. To C. M. Whittaker.

What is your business? How long have you followed it? State particularly what repairs you put on the Owen Gorman in the fall of 1855, and what was the amount of your bill for such repairs?

Fifth Cross-interrogatory. To James Dougherty, James Rice, Bernard Armstrong, George Fisher, Thomas H. Riley, and Joseph Maxfield.

Not to be put. } If, in answer to the 5th interrogatory, you say you have knowledge of the things inquired about, state how you got that knowledge, and who told you?

Sixth Cross-interrogatory. To John Campbell.

How long had you been in the business of canal boatman at the time of the accident to the Owen Gorman that you have testified about?

Do you know the points of a compass? If so, how many points are there?

Did you see a fender or other things put out by any person on board of the vessel against which the Owen Gorman surged or struck? If so, state what was done by that person, and all that you did and said at or about that time in and about the collision?

When did you first discover that your vessel was sinking?

CAMBRIDGE LIVINGSTON,
Claimant's Proctor.

Settled by consent, subject to all legal objections.

C. D. BURRILL,
Libellant's Proctor.

NEW YORK, February 9th, 1857.

Indorsed: 13, 468. United States District Court for the Southern District of New York. Patrick F. Brady *ag't* Steamboat New Philadelphia, her tackle, &c. Commission. C. D. Burrill, Libellants' Proctor.

The execution of this commission appears in certain schedules hereto annexed.

ROBERT P. KANE,
Commissioner.

United States District Court for the Southern District of New York.

Interrogatories to be administered to Patrick Campbell, of Philadelphia, Pennsylvania; witness to be produced, sworn, and examined in a cause pending in the above court, wherein Patrick F. Brady is libellant, and the steamboat New Philadelphia and the Camden and Amboy Railroad complainant.

First. What is your name, age, residence, and occupation? Are you acquainted with the libellant above named?

Second. Do you know the barge called the Owen Gorman? and if so, state how long you have known her? How, and of what materials was she built? Was she well and strongly built? if not, how otherwise?

Third. Have you any knowledge, and if so, what, in regard to the condition of the said barge at the time she left Philadelphia for New York, on her voyage in the month of April last? If so, state whether she was then tight, staunch, and strong, and if not, how otherwise? Also state whether she was well manned, tackled and apparelled, and fit for a voyage to New York, with a cargo of coal, and if not, how otherwise?

Fourth. Were you the captain of the Owen Gorman on her voyage from Richmond to New York, in April last? State what hands she had on board during such voyage, and the nature and quantity of her cargo. State when she left Richmond and what route she took to New York, the time she reached and the time she left New Brunswick. State when she was taken in tow by the steamer New Philadelphia and for what place. State when she passed into the East river and how many barges and boats she had in tow at the time.

State on which side of the steamboat the barge was, and describe also the position of the other barges immediately prior to the accident hereinbefore mentioned.

Fifth. Do you remember the circumstance of the barge being run against a vessel lying at the dock in the East river while in tow by the steamboat? If so, state the time when and the place where the accident occurred; also what the steamboat was doing or trying to do at the time, and whether the steamer was bound up the East river, and if not, how otherwise. Was the tide flood or ebb, and was it strong or slack? What was the vessel against which the barge was run and where and how was she lying? Did the barge and the other vessel come together with force or not? If with force, state whether with much or little. Did the steamboat turn her bow up the East river before the collision? If so, state how soon before the collision and whether she was close or not to the vessel at the dock when she turned. What was the occasion of the collision? Was the steamboat and her fleet brought around in a skilful and careful manner; if not, how otherwise? If you shall say that it was in an unskilful and careless manner, then state in what respect careless and unskilful. Could the collision have been avoided on the part of the steamer; if so, state how? Could she have landed the boat which was about to be dropped without having brought the barge into collision; and if so, state how and in what manner and by what means such object might have been attained and the collision avoided?

Sixth. In what part of the barge was she struck, and how and with what force was the blow given, and what was the result? Was any, and if so, what injury done to the planks and sides of the vessel? Were there any holes made in the side; if so, state where they were? Did she take in any water after the injury, and to what extent? Was she filled with water? Did she sink; if so, state where and when she sank? After the barge was brought into collision, did the steamboat continue on her way with the barge, and if so, how far? Why did not the boat sink sooner than she did? While she was in tow of the steamboat, and after the collision, did you or the crew of the barge know in what condition she was; if so, were any steps taken by you or the crew of the barge to keep her afloat? Was any notice given to the captain of the steamboat about the condition of the barge after the collision? If not, state why such notice was not given, and also state whether the captain of the steamboat and those aboard knew in what condition the barge was. After the barge was released from the steamboat, were any, and if so, what efforts made by you and the hands on board the barge to prevent her sinking; and if so, state what such efforts were, and if none were made, state why they were not made?

Seventh. State by whom and to whom the directions in regard to the course and management of the barge were given to all the barges during the voyage. If you say that they were given by the persons

in charge of the steamer, state whether such directions were given to all the barges. When barges are in tow of steamboats, state by whom the management and movements of the barge are directed and controlled, and whether the captain of the barge is subject to the control of any one, and if so, whom, in respect to the course and management of the barge while being towed. Were there any, and if so, what directions given by the persons on board the steamer to the barge in regard to her course and management immediately prior to the collision; if so, state by whom and to whom such directions were given, and what such directions were, and whether they were obeyed, and what the result and consequence of such directions? State whether the captain of the steamboat, during the voyage, managed his boat and fleet with care and skill, and if not, how otherwise. State whether, and if so, what complaints had been made to the captain during the voyage and before the collision in regard to his conduct, and what was the occasion of such complaints, and the circumstances under which they were made; and also state whether, from what occurred during the voyage, the captain of the steamboat in your opinion was a careful, competent or prudent man; and if he was not, state why you think that he was not.

Eighth. Do you know of any other matter or thing material to the plaintiff, and if aye, state the same fully and particularly as if specially interrogated thereto.

C. D. BURRILL,
Libellant's Proctor.

Settled, subject to all legal objections, September 10th, 1857.
CAMBRIDGE LIVINGSTON,
Proctor for Claimants.

Indorsed: United States District Court, Patrick F. Brady *agt.* Steamboat New Philadelphia, her tackle, &c. Interrogatories. C. D. Burrill, libellant's proctor.

Due service admitted, September 1st, 1857.
CAMBRIDGE LIVINGSTON,
Attorney for Respondents.

United States District Court, Southern District of New York.

Cross-interrogatories to be administered to Patrick Campbell, witness on the part of the libellant, Patrick F. Brady.

First Cross-interrogatory.

What is your business? If you state what materials the Owen Gorman was built of and whether or not she was strongly built, state now what kind of knees she had, and how many, and how the knees were made and put together—were the knees in one piece, or in two or

steamboat had turned her bow up the river before the collision; it was a very short time before the collision, when the steamer was not more than half a barge's length from the vessel in the dock. I thought, at the time, she was going to run straight into that vessel; the occasion of the collision was the unskilful manner in which the steamer attempted to land the stern boat on her larboard side; both she and her fleet were brought round in an unskilful and careless manner; either the steamboat should have headed up the East river sooner than she did, and at a greater distance from the dock, and in passing up dropped the barge she intended to land, or else she should have headed straight to the dock, until within a certain distance, and then heaved a line, dropped the barge, and passed up. This last, I believe, it was the intention of the steamer to have done; but doing it so unskilfully and carelessly, without making any allowance for the force of the tide, caused the collision.

Sixth. To the sixth interrogatory, he saith:

The barge was struck on her starboard side, about midships, with great force, so as to break the planks on that side, making two holes on the third plank above the bilge plank. She took in water rapidly after the injury, and filled and sank in about half an hour afterwards, at Washington street, Brooklyn. After the collision the steamer continued on her way with the barge, as far as the street I have named. While the barge remained in tow, after the collision, we did not know the condition in which she was. I do not know why she did not sink sooner than she did. I didn't think the water could have come in as rapidly while she was in motion through the water as it did after she was loosed from the steamer. She certainly met with no other injury between the time of the collision and her sinking. Not knowing while in tow that the barge was sinking, we did not give any notice of the fact to the captain of the steamer. I do not think those on board the steamer could have known our condition. After we were landed at Washington street, I judged, from the appearance of the boat in the water, that she was sinking. I lifted the bow hatch and found the water raising rapidly. A stevedore, Mr. Braceland, who was on the wharf, jumped on board with four of his men to assist me. We tried the pumps first, but saw, from the rapidity with which the water was gaining on her, there was no use of working them; we then endeavored to drag her up the dock into shallow water, and this we did until, at about half-way into the dock, her bow grounded; there she sank, sliding off into 40 feet of water.

Seventh. To the seventh interrogatory, he saith:

The directions in regard to the course and management of the barge during the voyage were given by the master of the steamer. These directions were given, I believe, to all the barges, when barges are in tow of steamboats. Their managements and movements are directed and controlled by the steamer, to the captain of which the captain of the barge is subject, in respect to the course and manage-

ment of his barge while under tow. I do not know of any directions given by the persons on board the steamer to the barge at the time inquired of; our general orders from the captain of the steamer were to do nothing without an express command from him, and I should have known of any special orders, if such had been given. During the voyage from New Brunswick the captain of the steamer more than once managed his boat and fleet carelessly and unskilfully. Complaints, I know, were made to him during the voyage, as to his conduct. I do not now recollect all the circumstances on which these complaints were founded. I remember on two occasions during the voyage, when two of the stern boats got adrift, and the captain, in picking them up again, both by stopping his boat too suddenly, and also by, in a rash and unskilful way, returning for them, damaged more or less the greater part of the vessels in tow. I think it was twice in one night that these same barges getting adrift, the captain was guilty of the same mismanagement in the way in which he again got them in tow. In my opinion, the captain of the steamboat was not a careful, competent, or prudent man. I formed my judgment of his character upon the occurrence to which I have just referred, during the voyage from New Brunswick, by his carelessness in the East river, resulting in the sinking of the Owen Gorman, as already detailed, and by my experience of his character on previous voyages.

Eighth. To the eighth interrogatory, he saith:

I know of no other matter or thing material to the plaintiff in this cause.

Cross-interrogatories.

First. To the first cross-interrogatory, he saith:

My business is that of a boatman; I am the captain of barges. The knees of the Owen Gorman were of oak. I do not know how many knees she had; I should suppose about 14; she had, however, the usual number. They were of oak naturally bent, hewn in the ordinary manner, and put together with bolts; the knees were in one piece. She had a keel about 4 by 6 inches in size; she had besides the knees, I should suppose, about 206 timbers, other than planks. They were placed in the usual way in the bilge, a timber to every knee. These timbers varied in size, I suppose, from 3 by 4 inches to 4 by 6.

Second. To the second cross-interrogatory, he says:

I obtained my knowledge of the condition of the Owen Gorman and her seaworthiness, at the times referred to in the third direct interrogatory, by having been on board of her from the spring of 1855, and by having seen her undergoing repairs at Mr. Whittaker's yard, on the Schuylkill, in the fall of that year. I have no experience in boat-building, except what I have gathered from being on boats as a captain for five or six years, and from having frequently seen them undergoing repairs. I have acquired my experience in their strength and worthiness in the same way. I am a judge of the condition of a boat.

Third. To the third cross-interrogatory, he saith:

I have acquired my knowledge as to the things inquired of in the fourth direct interrogatory by being a captain of a barge for five or six years, and by having during that time been frequently in the tow of steamers and subject to their *and* management.

Fourth. To the fourth cross-interrogatory, he saith:

I did see a fender put out by a person on board of the vessel against which the Owen Gorman struck; that person placed out his fender in such a way as to come between his vessel and the Owen Gorman, so that the Owen Gorman came in contact with the fender. She struck the vessel, however, first, before she struck the fender. I do not know of anything that I did or said, at or about that time, in and about the collision. I first discovered that the Owen Gorman was sinking after we had been let go by the steamer at Washington street.

Fifth. To the fifth cross-interrogatory, he saith:

I do not know of any other matter or thing material to the defendant in this cause.

PATRICK CAMPBELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 17th day of September, 1857, before me.

ROBERT P. KANE,
Commissioner, &c.

Indorsed: U. S. District Court. Patrick F. Brady *agt.* The Steamboat New Philadelphia, her tackle. Commission. C. D. Burrill, libellant's proctor.

Depositions of witnesses produced, sworn and examined on the 25th, 28th, and 30th days of March, and on the 15th and 25th days of April, in the year 1857, at the office of Robert P. Kane, Esquire, in the city of Philadelphia, under and by virtue of a commission issued out of the District Court of the United States for the Southern District of New York, in a certain cause therein depending and at issue between Patrick F. Brady, libellant, and Steamboat New Philadelphia, &c., respondents, as follows:

John Campbell, of the city of Philadelphia, boatman, aged 19 years, being duly sworn pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say:

1. First. To the 1st interrogatory, he saith:

My name is John Campbell, I am 19 years of age, reside in the city of Philadelphia, and follow the occupation of a boatman. I know Patrick F. Brady, the libellant in this case.

2. Second. To the 2d interrogatory he saith:

I know the barge called the "Owen Gorman," and I have known her since the month of April, 1856, at which time I went on board

of her as a boatman. She was substantially built, her timbers and outside planking were of oak, her ceiling of oak and pine, and her decks, hatches, and clamping of pine. She was well and strongly built.

3. Third. To the 3d interrogatory, he saith:

I know the condition of the barge "Owen Gorman" at the time inquired of. I know that she was in good condition. I know that she was then tight, staunch and strong, and that she was well manned, tackled and appointed and apparelled, and that she was then fit for a voyage to New York, with a cargo of coal.

7. Seventh. To the 7th interrogatory, he saith:

I was a hand on board the "Owen Gorman" on the voyage inquired; she had in her service two persons during that voyage, Patrick Campbell, who had charge of her, and myself. Her cargo consisted of coal, I think two hundred and eight tons. She left Richmond on the 13th of April, and took the route to New York by way of the Delaware and Raritan canal; she arrived at New Brunswick on the 15th of the month, and on the following day was taken in tow by the steamer "New Philadelphia," and on the same day left New Brunswick for New York. On the next day, the 17th, she passed into the East river, being in tow of the steamer. There were at the time eight barges in tow. The Owen Gorman was the outside boat on the starboard side of the steamer. To the best of my recollection there were two boats, one outside of the steamer astern of us, and one other astern of them. I cannot say how the boats were arranged on the larboard side of the steamer.

8. Eighth. To the 8th interrogatory, he saith:

I remember the circumstance of the barge Owen Gorman while in tow of the steamboat being run against a vessel lying at the dock in the East river; this occurred on the 17th of April, at the Atlantic dock, Brooklyn; the steamboat at the time was trying to drop one of the barges she had in tow, so that she could get into the dock; the steamboat was heading at the time up the East river; she was bound up that river; the tide was ebb and running strong. The barge was *run* against a sloop which was lying at the dock discharging a cargo, and heading up the East river. They came together with great force. I am unable to say that the steamboat turned her bow up the East river before the collision or not. To the best of my belief her bow was turned or turning up the East river at the time of the collision. The collision was occasioned by the unskilful and careless manner in which the steamboat and her fleet were brought round. The steamboat should have come alongside of the dock and slowed so that a line could have been thrown from the barge that was to be landed. Had she so done the collision would have been avoided. At the same time I would add that the steamboat should have made allowance for the tide, which was running hard, which she failed to do.

9. Ninth. To the 9th interrogatory, he saith:

The barge was struck on her starboard side about amidships, with great force, so as to knock a hole in her side; the blow broke in her planking; she began taking in water and finally sank, about three quarters of an hour or an hour afterwards, at the Washington street dock. After the collision the steamboat kept on with the barge until she dropped her at the Washington street dock. I do not know why the barge did not sink sooner than she did; while she was in tow of the steamboat after the collision, and until she was dropped at her dock, we did not know of her condition; as soon as we observed that she was filling we tried the pumps, but soon found that would not do. We then endeavored to heave her up as far as she would go by means of a hawser. Some men assisted us, and we heaved her up until she was aground. We did not give the captain of the steamboat notice of the condition of the barge, because when he cast us adrift we did not know that she was sinking, and when we did discover her condition, the steamboat had left us and proceeded on her way with the other boats. After the barge was released from the steamboat, we did make efforts to keep her afloat. I have already stated what we did.

10. Tenth. To the 10th interrogatory, he saith:

The directions in regard to the course and management of the barge during the voyage were given by those in charge of the barge. These directions from the steamer were given to all the barges. When barges are in tow of steamboats the management and movement of the barge are directed and controlled by the steamboat, and the captain of the barge is subject to the control of the captain or those in charge of the steamboat, in respect to the course and management of the barge while being towed. No directions were given by the persons on board the steamer to the barge in regard to her course and management immediately prior to the collision.

Cross-interrogatories.

Second. To the 2d cross-interrogatory, he saith:

I have knowledge of the collision of the Owen Gorman, and of her seaworthiness at the time referred to in the direct interrogatory. I got that knowledge by being on board of her as a hand during the trip to New York. I have had no experience in boat-building, or in the strength and worthiness of boats of the kind referred to, save that acquired by following the water as a hand in that kind of boats.

Sixth. To the 6th cross-interrogatory, he saith:

At the time of the accident to the Owen Gorman of which I have testified, I had been in the business of canal boatman about three years; I do not know the point of a compass; I did see a fender put out by a person on board the vessel against which the Owen Gorman struck. I did not see that person do anything besides putting out

the fender; the fender was a round piece of wood. I do not remember doing or saying anything at or about that time, in and about the collision. I first discovered that our vessel was sinking, after she was cast loose from the steamer and was in the dock.

JOHN CAMPBELL.

Examination taken, reduced to writing, and sworn to by the witness, and by him subscribed, this the 25th day of March, 1857, before

ROBERT P. KANE,
Commissioner.

George A. Twibill, of the city of Philadelphia, barge-owner, aged 24 years and upwards, being duly sworn pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say:

1. First. To the 1st interrogatory, he saith:

My name is George A. Twibill; I am 34 years of age; I reside in the city of Philadelphia, and am a barge-owner. I know Patrick F. Brady, the libellant in this case.

2. Second. To the 2d interrogatory, he saith:

I know the barge called the "Owen Gorman;" I have known her since the year 1850; I think she was about new at that time; she was built of white oak and pine; her timbers and outside planking were of white oak; she was well and strongly built, and was one of the best boats on the Schuylkill at the time I first knew her, and was so reputed.

3. Third. To the third interrogatory, he saith:

I have no knowledge of the condition of said barge at the time she left Philadelphia for New York, in April last.

Cross-interrogatories.

2. Second. To the 2d cross-interrogatory, he saith:

I got my knowledge of the condition of said barge at the time referred to in my answer to the 2d direct interrogatory by being very frequently on board of her. I have already stated that I have no knowledge of her condition at the time referred to in the 3d direct interrogatory. I have had experience in boat-building, and in the strength and worthiness of boats of this kind. I now own seven such boats. I had at different times owned altogether 30 or 40 boats of the same character, of which number fifteen were built for me to my own order.

GEORGE A. TWIBILL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this the 25th day of March, 1857, before

ROBERT P. KANE,
Commissioner.

Patrick Lafferty, of the city of Philadelphia, ship-carpenter, aged 29 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed and examined on the part of the libellant, doth depose and say, as follows:

1. First. To the 1st interrogatory, he saith:

My name is Patrick Lafferty. I reside in the city of Philadelphia; I am a ship-carpenter by trade, and am 29 years of age; I am acquainted with Patrick F. Brady, the libellant in this case.

2. Second. To the second interrogatory, he saith:

I know the barge called the "Owen Gorman;" she was well built of white oak and pine; her timbers and outer plankings were of white oak, and her deck of pine; she was well and strongly built; I considered her a very good boat in 1855.

3. Third. To the 3d interrogatory, he saith:

My knowledge of the condition and seaworthiness of the "Owen Gorman" at the time referred to in my answer to the second direct interrogatory was acquired through an examination of that barge, which I made for Mr. Brady, and at his request, in the fall, I think, of 1855; I examined her thoroughly; I have already stated that I do not know her condition at the time referred to in the third direct interrogatory; my experience in boat-building had been that of a ship-carpenter, which occupation I have followed since the termination of my apprenticeship, in the year 1852; I have worked at that business in New York, Cincinnati, Louisville, and New Orleans, and at the Philadelphia Navy Yard.

PATRICK LAFFERTY.

Examination taken, reduced to writing, and by the witness subscribed, and sworn to, this the 30th day of March, 1857.

ROBERT P. KANE,
Commissioner.

Thomas Gorman, of Port Carbon, Schuylkill county, and State of Pennsylvania, miner and barge-owner, aged 35 years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say, as follows:

1. First. To the 1st interrogatory, he saith:

My name is Thomas Gorman. I am thirty-five years of age; I reside at Port Carbon, in the county of Schuylkill, and State of Pennsylvania, and my occupation is that of a mine-worker and owner of barges; I rent the mine I work; my principal business is owner of barges; I know Patrick F. Brady, the libellant in this case.

2. Second. To the 2d interrogatory, he saith:

I know the barge "Owen Gorman;" I had it built for myself, I think in the year 1849; I have known her since that time; she was

built of the best materials; her timbers and outer plankings were of white oak, and her deck of pine; she was well and strongly built.

3. Third. To the 3d interrogatory, he saith:

I have no knowledge of her condition at the time referred to.

4. Fourth. To the 4th interrogatory, he saith:

I was the owner of the said barge in 1849, and remained so until I sold her to Mr. Brady, the libellant in this case, in the summer of 1855; at the time she was sold she was in good condition, but she wanted some repairs, such as recaulking of her decks, and some little wood work; these repairs were put upon her by Mr. Brady, I think, in the same summer that he bought her.

Cross-interrogatories.

2. To the 2d cross-interrogatory, he saith:

My knowledge of the condition or seaworthiness of the "Owen Gorman" at the times referred to in my answer to the second interrogatory was acquired by me as her owner; I was very often on board of her, and she was built under my directions by Frederick Albright, a boat-builder at Hamburg, on the Schuylkill. I have already stated that I have no knowledge of her condition in April, 1856; I have been on and about boats of the same kind as this Owen Gorman since I was 12 years of age, beginning as a team-driver on the canal; for the last 15 years I have been the owner of boats of this sort; I have had, I believe, some twenty of these boats built and altered for me, and under my direction; I have had boats built by Mr. Frederick Albright, above-named, by Mr. Shoppel, formerly of Port Carbon, now deceased, and by Samuel Gray, of the same place, and I have purchased boats from other parties.

3. To the 3d cross-interrogation, he saith:

The "Owen Gorman" was a boat built expressly for me; she was nearly 6 years old when sold by me to Mr. Brady.

Mr. Brady paid me for her fourteen hundred and fifty dollars, of which some three hundred and forty were in cash, and for the remainder I gave a short credit. The whole transaction was closed before the fall of the same year, and the boat by that time entirely paid for.

I had no interest in her at the time when accident occurred to her on the voyage in April last.

THOMAS GORMAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this the 15th day of April, 1857, before

ROBERT P. KANE,
Commissioner.

William Murtagh, of the city of Philadelphia, boatman, aged 27 years and upwards, being duly and publicly sworn pursuant to the directions thereto annexed, and examined on the part of the libellant, doth depose and say:

1. First. To the first interrogatory he saith:

My name is William Murtagh; I am 27 years of age; I reside in Philadelphia, and follow the occupation of a boatman. I am acquainted with Patrick F. Brady, the libellant above-named.

2. Second. To the second interrogatory he saith:

I know the barge called the "Owen Gorman;" I have known her for four or five years, although I was never on board of her to examine until two years ago this summer; she was well and strongly built of white oak and pine. Her outside was of white oak and so were her timbers.

3. Third. To the third interrogatory he saith:

I have not any knowledge in regard to the condition of the said barge at the time she left Philadelphia for New York, in the month of April, 1856.

11. Eleventh. To the eleventh interrogatory he says:

I had an interview with the captain of the "New Philadelphia," in regard to the collision by which the Owen Gorman was injured; a man named Edward Duffy was present at the time; the interview took place on the 19th of April, 1856, in the city of New York, on West street near Hammersley; I met the captain and asked him how he came to sink the "Owen Gorman." He said he never landed a boat so nicely. I asked if he did not swing her against a schooner. He said he was landing one of his *boats* that he had in tow at the Atlantic dock, Brooklyn, and it being a strong ebb tide his tow swung around, and the Owen Gorman being the next boat to the spur boat swung in against a schooner lying alongside of the wharf, and that one of the hands aboard of the schooner held a wooden fender down, and that it was very probable the coming together and the fender striking between two timbers made a hole in her and caused her to sink.

Cross-interrogatories.

To the second cross-interrogatory he saith:

My knowledge of the condition or seaworthiness of the "Owen Gorman," at the time referred to in the second direct interrogatory, was obtained by being frequently on board of the same. I noticed her more particularly after she became the property of Mr. Brady, the libellant. I have already answered that I do not know her condition at the time referred to in the third direct interrogatory. I have had no experience in boat-building, and my experience in the strength or worthiness of boats of this kind has been obtained only by becoming familiar with them during the five years in which I have been a boatman.

WILLIAM MURTAGH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the twenty-fifth day of April, 1857, before

ROBERT P. KANE,
Commissioner.

Conrad M. Whittaker, of the city of Philadelphia, boat-builder, aged 32 years and upwards, being duly sworn pursuant to the directions hereto annexed, and examined on the part of the libellant, doth depose and say as follows:

To the first interrogatory he saith:

My name is Conrad M. Whittaker; I am 32 years of age; I reside in the city of Philadelphia, and am a boat-builder by profession. I know Patrick F. Brady, the libellant in this case.

To the third interrogatory he saith:

I have no knowledge of the condition of said barge at the time *at the time* she left Philadelphia for New York, on her voyage in the month of April, 1856.

To the fifth interrogatory he saith:

I have already stated in my answer to the second interrogatory that I know the barge "Owen Gorman," and that she was built of white oak and pine, and that she was well and strongly built when I saw her in the summer of 1855. I put repairs on her in the month of July, 1855, at my boat-yard at the west side of the Wire Bridge, on the river Schuylkill. I caulked her throughout, put a new waist on her, and partly a new deck. I put her in first rate running order, and she was in such order when she left my yard.

Cross-interrogatories.

First. To the first cross-interrogatory he saith:

I am a boat-builder; the "Owen Gorman's" knees were of white oak; I do not remember how many knees she had, I suppose one hundred; each knee was in one piece of natural growth, bottled on to the floor timbers. She had a keel three inches thick by twelve inches wide; the keel was of white oak planking, but the kelson was solid twelve inches square. There were timbers on the barge "Owen Gorman" other than plank. She *had* the floor and top timbers; between fifty and sixty floor timbers four inches by seven each, and between seventy and eighty top timbers four inches by four each, about one hundred knees four inches by seven each, fastened to those timbers, and a kelson of two pieces twelve inches by twelve each. These timbers were placed as is usual in building vessels.

To the second cross-interrogatory he saith:

I have already stated in answer to the third direct interrogatory that I have no knowledge of the condition of the Owen Gorman at the times therein referred to. I have had experience in boat-building and in the strength or worthiness of boats of this kind, having

been a boat-builder in the city of Pennsylvania for the last nine years.

To the fourth cross-interrogatory he saith:

My business is that of a boat-builder; I have followed that business for nine years. In the summer of 1855 I repaired the "Owen Gorman" for Mr. Brady; I put on her a new bow-deck of pine, a new waist of white oak *log*, some white oak planking, and I caulked her. The amount of my bill was $193 41.

C. M. WHITTAKER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this the twenty-fifth day of April, 1857, before

ROBERT P. KANE,
Commissioner.

Indorsed: United States District Court for the Southern District of New York. Patrick F. Brady *agt.* The Steamboat "New Philadelphia," her tackle, &c. Commission to Philadelphia. C.p. Libellant.

United States District Court for the Southern District of New York.

PATRICK F. BRADY
against
THE STEAMBOAT NEW PHILADELPHIA.

Captain Benneville Schweimer, being sworn pursuant to stipulation as a witness on the part of the claimants, says:

I know the barge Owen Gorman; have known her about six or seven years. I recollect the accident alleged to have been done to the Owen Gorman while in tow of the steamboat New Philadelphia; it occurred in the spring of 1856; my barge, the Baltic, was in tow of the steamboat at the time. We had left the other boats on the North river somewhere, it is so long I cannot recollect. My boat was on the larboard side next to the steamboat; the Owen Gorman was on the outside of the "spur" boat on the starboard side of the steamboat; there was one boat, I think, astern of the Gorman; I don't know whether we went around outside of Governor's island or inside of it. When we approached the Atlantic dock, I know we headed up the East river. The headway of the steamboat was stopped before we landed; the steamboat slowed before we came to the dock, about one hundred yards from the dock; I am not certain whether the steamboat's headway was stopped entirely or not; she landed there same as they always land; the tide was ebb at that time; the steamboat stopped to drop one of the barges in tow. I am not certain whether we landed against a pier or a vessel; there were vessels laying above the pier; none below. They generally land

by the wharf. I don't know what kind of vessel it was laying along the dock, whether she was a schooner, sloop, ship, or what. We landed by the side of the pier on the lower side of the cut. I am not certain whether there was any vessel lying there or not.

Question. In landing did the Owen Gorman strike against the pier or vessel alongside the pier?

Answer. I don't know.

Question. Did you see the landing at the time?

Answer. I saw them land; I was standing on the deck of the steamboat on the after part; I was watching the landing.

Question. In landing did you feel a shock, or jar, or concussion? (Objected.)

Answer. I did not.

Question. Did you hear the sound of anything breaking or crushing? (Objected.)

Answer. I did not.

Question. If the landing had been so violent and there had been any jar, would you have felt, or, had there been any crushing, would you have heard it? (Objected.)

Answer. I would have heard it if anything had been broken. I have been running about sixteen or seventeen years.

Question. In your opinion is it as safe to land a vessel against another vessel as against a pier? (Objected.)

Answer. Yes; I would just as leave be landed against a vessel as a pier.

Cross-examined.

I was on the steamboat at the time of the collison; I got on her maybe six or twelve hundred yards before we slowed; it was a quarter of an hour anyhow; I was aft on deck. There is only one deck there.

Question. Was there more than one deck to the steamer?

Answer. There was only one deck to her where I stood; I was not talking to any one. The pilot house was not on the same deck where I was standing; it was above me; I could see it; I was on the side nearest to Brooklyn. I saw Governor's island fort on the day the collision took place; I saw it before the boat was landed; I was on the deck of the steamboat; I got on board of the steamboat just as we came up to it. I am not certain how we came up; whether we came up the East river or down the bay. I could see the Owen Gorman from where I was standing. I don't recollect seeing any of the hands of the Owen Gorman come up out of the hold with a rope. The bow of the steamer headed up the river before we struck; it had got completely around; the steamer did not get past the dock until after the barge was landed; she went across the river straight from the dock; whether she went below or above the island I don't know, that is, I don't know whether she went between Governor's island

and the Battery or the other side of the island; my boat was landed at 25th street, East river; I saw the Owen Gorman landed.

Redirect.

The Owen Gorman was landed at Washington street.

It took an hour or an hour and a quarter to go from the Atlantic dock to Washington street. The way we landed there, the first that I saw she got against a sloop. The sloop was lying on the lower side of the pier; there is a short and long pier at the foot of Washington street; the sloop was lying alongside the long pier. There was a line thrown from the Owen Gorman to the captain of the barge Benton Jacobs, who was standing on the short pier; they were heaving her in with the line.

When I last saw her she was laying against the sloop Formar; they had a line on the sloop for fear the other line would part; she was landed between the long pier and the short pier; the sloop lay alongside the long pier. There were two lines, one to the sloop and one to the short pier, and they hauled her in with the one they run to the short pier.

Question. When the Owen Gorman was landed at the foot of Washington street, was she to all appearances in as good a condition as when she left the Atlantic dock?

Answer. Yes, sir; I did not notice she was sinking or whether she was full of water.

I do not mean that when she went up against the sloop she went against her hard enough to hurt her; she touched the sloop, but not hard enough to hurt her, as I thought. I don't mean to say she struck against her.

BENNEVILLE SCHWEIMER.

Sworn to before me, this the 27th of October, 1857.

CHARLES D. BURRILL,
Commissioner of Deeds.

We hereby consent that the filing of the foregoing deposition be waived.

C. D. BURRILL,
Libellant's Proctor.
CAMBRIDGE LIVINGSTON,
Claimant's Proctor.

October 27th, 1857.

Indorsed: U. S. District Court for the Southern District of New York. Patrick F. Brady agt. The Steamboat New Philadelphia. Testimony of witness. Cambridge Livingston, claimant's proctor; C. D. Burrill, Esq., libellant's proctor.

In Admiralty. United States District Court.

PATRICK F. BRADY
agt.
THE STEAMBOAT NEW PHILADELPHIA,
her tackle, &c.

City and County of Philadelphia, *ss:*

Patrick F. Brady, the libellant, being sworn, says, that he was the owner of the barge Owen Gorman, at the several times in the libel mentioned, and at the time of the disaster therein complained of, and that the statements in the first allegation of the libel are true.

PATRICK F. BRADY.

Sworn and subscribed before me, at Philadelphia, January 13th, 1857.

CHAS. F. HEAZLITT,
U. S. Comr.

It is consented that the foregoing deposition of Patrick F. Brady be read in evidence on the trial of the above entitled action, with the same effect as if the deposition of a disinterested and competent witness had been taken pursuant to the rules and practice of this court, and he had testified to the same facts.

CAMBRIDGE LIVINGSTON,
Claimant's Proctor.

Indorsed: U. S. District Court. Patrick F. Brady *agt.* The Steamboat New Philadelphia. Affidavit of Patrick F. Brady. C. D. Burrill, libellant's proctor.

State of New York, United States of America, *ss.*

I do solemnly, sincerely, and truly swear, that on the 19th day of April, 1856, at the city of New York, I went in company with William Murtagh, to see the captain of the steam tow boat New Philadelphia, in reference to the sinking of the barge Owen Gorman; I met Mr. Murtagh on West street, near Christopher. He requested me to accompany him, and we met the captain between Clarkson and Leroy streets. Mr. Murtagh and the captain of the New Philadelphia then conversed for some time in regard to the collision. I stood by and heard what they said. Mr. Murtagh asked him in what way he had sunk the Owen Gorman, a barge that he had in tow from New Brunswick. The captain said he had come to Brooklyn to land one of his boats in tow, and the swinging around, and the fact that the Owen Gorman was the boat next the spur boat and the outside

boat of the tow, operated so that when the tow swung she (the Owen Gorman) struck a schooner lying at the dock. That after landing the boat he wished to land, he proceeded to land the Owen Gorman, and did land her at the foot of Washington street, Brooklyn. That he then proceeded to land the other boats, and did not know of the Owen Gorman's sinking *until* he had come around in the North river. That if the Owen Gorman had got a hole in her that caused her to sink, it must have been caused by the collision consequent on the tow swinging against the schooner.

his
EDWARD ⋈ DUFFY.
mark.

Subscribed and sworn to before me, a notary public, duly admitted and sworn, this 1st day of August, 1856.

WM. W. HOWE,
Notary Public, 51 Wall street.

Indorsed: Affidavit of Edward Duffy.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall in the city of New York, on Saturday, the 27th day of March, in the year of our Lord one thousand eight hundred and fifty eight.

Present: The Hon. Saml. R. Betts, district judge.

PATRICK F. BRADY
agt.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c. } 13, 468.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel filed in this cause be dismissed, with costs to the claimants to be taxed.

SAMUEL R. BETTS.

Indorsed: Vol. 13, No. 468. United States District Court for the Southern District of New York. Patrick F. Brady *vs.* The Steamboat New Philadelphia, her tackle, &c. C. D. Burrill, proctor for lib'lt. C. Livingston, proctor for clm'ts. Decree dismissing libel with costs. Filed the 27th day of March, 1858.

District Court of the United States for the Southern District of New York.

PATRICK F. BRADY, appellant,
agt.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, and the CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, respondents.

SIR:

The libellant appeals from the final decree of the court in this cause.

Dated New York, March 31st, 1858.

CHARLES D. BURRILL,
Libellant's Proctor.

To GEORGE F. BETTS, Esq.,
Clerk.
CAMBRIDGE LIVINGSTON, Esq.,
Clmt's Proctor.

Indorsed: 13, 468. District Court of the United States. Patrick F. Brady, appellant, *agt.* The Steamboat New Philadelphia, her tackle, &c., et al., respondents. Notice of appeal. Charles D. Burrill, libellant's proctor. Filed, 3d of April, 1858.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY
against
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c.

It is hereby stipulated and agreed by and between the proctors for the respective parties herein, that the stipulation for costs filed and executed in the above action, upon the issuing of the process therein out of the District Court, stands as the stipulation for costs and appeal herein, and we hereby waive the filing and execution of any other or further stipulation in the said cause, unless hereafter required.

CAMBRIDGE LIVINGSTON,
Proctor for Claimants.

Dated April 5th, 1858.

Indorsed: 13, 468. Circuit Court. Patrick F. Brady *agt.* The Steamboat New Philadelphia, &c. Stipulation to waive. Charles D. Burrill, proctor for appellants. Filed, 8th April, 1858.

Circuit Court of the United States, Southern District of New York.

PATRICK F. BRADY, appellant,
against
THE STEAMBOAT NEW PHILADELPHIA, &c., THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, respondents.

To the honorable the Circuit Court of the United States for the Southern District of New York in the second circuit.

The appeal of the above named appellant respectfully showeth, that on the 25th day of August, in the year one thousand eight hundred and fifty-six, the above named libellant exhibited his libel in the District Court of the United States for the Southern District of New York, against the respondents, claiming damages to the amount of $2000, and praying among other things, for reasons set forth in the said libel, that the said steamboat New Philadelphia might be condemned to pay the damages as aforesaid and the costs in said libel mentioned.

That process issued out of said court having been served on the said respondents, they did, on or about the 19th day of September, in the year one thousand eight hundred and fifty-six, file their claim and answered to the said libel in the said District Court, praying that the said libel be dismissed with their costs on that behalf, as by reference to said libel and said answer and claim will more fully appear.

That the said cause came on to be heard before the Hon. Samuel R. Betts, judge of the District Court, on the 16th and 17th days of February, 1858, upon the depositions and proofs taken in said cause, and the testimony and proof adduced by the respective parties, and the said judge having advised thereon, on the 27th day of March, 1858, made a decree in said cause, whereby it was decreed that the said libel be dismissed with costs to the claimants, and this appellant is advised and insists that the said decree is erroneous, inasmuch as the libellant is entitled to the damages claimed in said libel, and that the said libel should not have been dismissed.

And this appellant for these and other reasons, appeals from the said in favor of the said respondent, to the next Circuit Court to be held in the said district, and on the said appeal they intend to have said cause heard anew in the Circuit Court, in the pleadings and proofs in the District Court, and other proofs to be introduced in the said Circuit Court.

And he prays that the record and proceedings may be returned to the said Circuit Court, and that the said decree may be reversed, or such other decree thereon be made as to the said Circuit Court shall

seem just, and that the said appellees may be condemned to pay to the appellants their costs and damages in the premises.

CHARLES D. BURRILL,
Proctor for Appellant.
I. E. BURRILL,
Advocate.

Dated April 7th, 1858.

To GEORGE F. BETTS, Esq.,
Clerk.

Southern District of New York, *ss.*

David F. Beck being duly sworn says, that he is a clerk in the office of the proctor for the libellant; that on the 7th day of April, 1858, at the city of New York, he served the within petition on appeal upon the proctor for the appellees therein named, by delivering a copy thereof to and leaving the same with some person in the office of the said proctor for the appellees, and having charge thereof.

DAVID F. BECK.

Sworn to before me, this 8th day of April, 1858.

GEORGE W. MORELL,
U. S. Commissioner.

Southern District of New York.

Indorsed: 13, 468. Circuit Court. Patrick F. Brady, appellant, *agt.* The Steamboat New Philadelphia, &c. Petition of Appeal. Charles D. Burrill, proctor for appellants. To George F. Betts, Esq., clerk. Filed, 8th April, 1858.

At a special term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Wednesday, the 29th day of September, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: the Honorable Samuel Nelson, Associate Justice of the Supreme Court of the United States.

PATRICK F. BRADY, libellant and appellant,
v.
THE STEAMBOAT NEW PHILADELPHIA,
respondent and appellee.

The appeal from the District Court in this case coming on to be heard,

Mr. Burrill reads from Apostle's testimony on part of libellant and appellant.

Mr. Beebe reads from Apostle's testimony on part of respondent and appellee.

Evidence on part of Appellant.

Deposition of Henry Bruland read.
" " Hugh James "
" " James McCauley "
" " Patrick Campbell "
" " John Campbell "

Evidence for Respondent.

Deposition of Cornelius Bogert read.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY, appellant,
against
THE STEAMBOAT NEW PHILADELPHIA, &c., respondent.

Henry Breslan, being sworn. I remember the barge Owen Gorman; I saw her in April, 1856, at the foot of Washington street, on the day she sank; I saw her when she came in.

Question. By what vessel was she towed on the day you refer to? (Question objected to as assuming that she was towed, and that he knows by what vessel she was towed.)

The vessel was in tow of a steamer; I do not remember her name; I was on the long dock, at the foot of Washington street, when I first saw the barge; she had not come up to the dock when I first saw her; she was coming up in tow of the steamer, and I took her line as she came up; *she landed at the long dock; I saw her when she sank;* this was not more than three-quarters of an hour after she landed, before she sank; *when she sank she was between the long pier and the short pier;* her head was up to the long pier; there was about fifty feet between the two piers; the barge did not touch *the short pier at all;* I was there from the time she landed until she sank; she came no nearer *to the short pier than ten or fifteen feet;* the tide at this time was a little ebb; the barge Owen Gorman was landed head in to the upper pier; I never saw a boat landed snugger; I did not see the barge touch anything before she sank. I am a stevedore, and reside at No. 12 Jay street, Brooklyn; have been in the occupation some eighteen years; I carry on the business; I am a boss stevedore, and have been for eighteen years; I started as boss stevedore; I am an Irishman; I never saw Patrick F. Brady until about a month ago; I attended to all kinds of stevedore business. I don't remember the year; it was within two years anyway;

I cannot tell what month it was in; it was in the spring of the year: I am sure of that; there was no snow on the ground; I am sure of that—quite as sure as anything I have testified to; those piers are used for all sorts of purposes; they are used for discharging coal boats; I have discharged coal on both of them; the long pier is well on to 100 feet longer than the short one; I was a stevedore at that time; I came on the dock to receive the line of the barge; I was looking for her to come in; I knew she was coming; my interest was that I wanted the job to unload her, *I wanted the job to unload her;* I knew she was coming from the consignees; I knew them very well, but don't remember the names; I have discharged vessels for them, before and since, almost every week, but I don't recollect in particular who they were; I had discharged the Owen Gorman before frequently; I might have discharged her a dozen times; I have never discharged her since; I never have seen her since; I was there when she was raised and taken away; I had discharged her prior to her being sunk perhaps a dozen times; I did not know Mr. Brady; he was not on the boat that day; when I first saw the barge in tow of the steamer, she was off the Marston and lower deck and I was on it; I don't know how many boats there were in tow of the steamer; I did not count them; she was coming up from nearly the direction of the South ferry; from Marston & Powers' dock to the foot of Washington street long pier, it is three blocks; when I first saw her, I was standing on the bulkhead at the end of the Marston & Powers' dock; the Owen Gorman was on the side next to Brooklyn; I think she was the second boat from the pier; she was outside of the steamer aside of her, with a boat between her and the steamer; I think this was the way of it.

The steamboat came near enough to Marston & Powers' dock for one to speak to the captain. The steamer was underway at that time. She was going ahead as fast as usual. They don't go fast against the tide. She hadn't passed the Marston & Powers' pier when I left. She was going on towards Washington street. She was abreast of the Marston & Powers' pier when I started to go. When I reached the long pier she had not got as far as Catharine ferry. It was the first attempt that was made to land her. She came up as near to the dock as ever I see. There was but one attempt made to land her to my knowledge. She came up very easy to the dock. She was landed at the long pier, about forty feet inside of the end of it. Her stern was out and her bow was in. She was landed bows on. She was fastened to the dock by a line from her. It was what we call a heaving-line—a bow-line. It came from the bow of the vessel. The steamer left the barge close up to the dock—her bow up the dock. When she left her, she was not as far in as the end of the short pier when the steamboat left her. There was a sloop, a schooner, at the long pier, farther in, lying alongside of the long pier. Nothing else at the long pier on that side. She came in

on the lower side, on the side towards the South ferry, and towards the short pier. I made the line fast. The barge came to anchor five or six feet of the stern of the sloop or schooner. The sloop or schooner was lying with her bows up the pier. There was nothing at the end of the long pier. There was nothing between the barge and the end of the pier, laying alongside of the pier. After I made the line of the barge fast, we wanted to get her farther up the pier, and we moved the line around the sloop or schooner, and hauled her up; and when she came up alongside of the sloop or schooner, we found her settling down. When the barge sunk, her bow was 40 or 50 feet farther up the slip than the schooner, but her stern was still outside of the schooner, close to the schooner's bows, and her own bow was up to the dock; that was the position she sank in. There was a boat alongside of the short pier, between the barge and short pier; it was a canal boat; and the barge sank between the schooner and the canal boat. I did not see Mr. Brady at that time. Never saw him until about a month ago. Never had any talk at the time with any one about her sinking, nor about the cause for her sinking, and I had no talk with any one about it. I have never thought about it since. I have had no talk with any one until Mr. Brady came to me about a month ago, and asked me if I knew anything about it. He asked me if I remembered anything about it. I told him I recollected the boat sinking. I did not tell him what I knew about it. The barge was in the neighborhood of between 90 or 100 feet. At the time she sank she had passed in partly in beyond the end of the short pier. A third of it was outside the end of the short pier. The barge laid angling into the dock. We all talked backward and forward about her sinking. I have never told any one what I knew about it. Don't know who sent Mr. Brady to me. When I left Marston & Powers' dock, there was no street to go through. I went in front of Jackson's stores. There is a gateway I had to go out. I passed Catharine ferry. I had to leave Marston & Powers' pier.

When the barge was found to be sinking, we hauled up the long pier, where the water was shallow. We had intended taking her to the short pier, if she had not sank.

Question. You have stated that you knew the consignees referred to very well, but did not remember their names. Will you state how often you have been employed by the consignees to whom the Owen Gorman was consigned on this particular occasion.

Answer. Often.

Question. Have you ever seen them?

Answer. I have.

Question. Where is their place of business?

Answer. I have been employed by so many that I cannot now recollect. I am sometimes employed by twenty of them in a day.

Question. What was the nearest point to which the barge approached the short pier on the occasion referred to?

Answer. She was not nearer than ten or fifteen feet. There was no boat that I remember of at the end of the short pier.

HENRY BRESLIN.

(Answer objected to by claimant as not responsive.)

Sworn to before me, this August 19th, 1858.

C. O. DAVISON,
Notary Public.

Hugh James. I am in boating business. In April, 1856, I had charge of a captain of the canal boat Brenton Jacobs. I knew the barge Owen Gorman. Have seen her frequently. Saw her in April, 1856. I saw her the day she sunk. I was standing on the short pier, at the foot of Washington street, Brooklyn. The barge was in tow of the steamer New Philadelphia. I first saw the barge when she was opposite the Catharine ferry. I remained on the pier until she came up. I saw her land. The steamer landed close by the end of the long pier. The long pier is north of the short one. The distance between the two piers I should think about 50 feet. I don't know; it may not be so much. The long pier, I should think, is over 100 feet longer than the short pier. The steamer landed the barge very nicely. They hauled her up past the schooner or sloop, or whatever was in it. Took notice to her sinking. We went to work, and got as men hold of it, and tried to draw her up to the head of the slip. I saw the line thrown out from the barge to the long pier. I saw Breslin. He was hauling to. Breslin had the line. Have been acquainted with Breslin for some years. I saw Breslin making the line fast to the pile. I didn't see the barge touch anything whilst she lay alongside of the schooner when they were hauling her up past into the slip. The barge was hauled head to the long pier. She was landed carefully, I should think. I couldn't say exactly how long it was before she sank; it may have been half an hour, and may have been more. I was there the whole of the time. She did not touch the short pier at all. She did not come within ten feet of it. There were no lines thrown from the short pier that I saw. The tide was going down at this time. There was a canal boat at the short pier when the barge came in, and during the whole time. She lay on the upper side, alongside of the short pier. The barge was between the canal boat and the sloop or schooner at the long pier.

I saw the steamer as she approached the pier; when I first saw her she was off Catharine ferry; I cannot tell the distance; it might be two or three hundred feet; I was there standing waiting for my boat to come in; she was coming from New Brunswick in the tow, I think, of the steamer Swan, but I am not certain; she did not get in until an hour or two after; the course of the steamer was outside the end of the long pier; it was not close to the dock; she may have

been 10 or 15 feet off. Her course was up along the dock; she headed partly on to the pier. Her stern was angling out, maybe 15 or 20 feet; it might be that her bow and stern were at this angle. My best recollection that the side of the steamer was nearest the pier was 10 or 15 feet off of the pier, and the stern still farther off; I cannot say positively; the barge was landed head on to the pier. I don't know how many boats the New Philadelphia had; I don't know how many tiers of boats she had, or how many she had abreast. I continued on the short pier until the after the barge sank; the steamer let go the barge before she was at the dock; she was not near the dock when the steamer cast her off; it may be she was 10 feet off; I should think the barge was as close as that; she may have been 10 feet or 20 from the pier when the steamer cast her off; there was no vessels lying at the end of the long pier. I am not certain whether the line from the barge was taken to the vessel which was lying aside of the long pier, or to the dock; the line was taking, I think, from the bow of the barge; I am not positive; I am not sure where it was taken from; there was no other vessel at the long pier, nor was there any at the end of the long pier; there was no vessel at the end of the short pier; the only two vessels in the neighborhood were the schooner and the canal boat; when she came to she came to at the pier at the stern of the vessel; the stern was swinging down by the tide; when she came to at the pier she came to head on nearly at right angles; the barge was about 90 feet along. It was not very long before we knew she was filling; it may have been half an hour, may not 20 minutes; I first knew she was sinking because she was low in the water. I heard nothing said about it. When I noticed her bow in the water they were hauling her up alongside of the schooner. I saw them hauling, but I didn't know where. Do not remember of but one attempt to land her; only saw one. Can't state whether there was more than one. I saw the steamer approach the long pier, and throw her line out. Did not see her drift back towards the short pier. Cannot say whether she did or not. I stood in the same position without changing my place from the time I saw the steamer approach until the barge sunk. When she sunk she lay head up the slip, up towards the upper end of it. I should think 25 or 30 feet past the end of the short pier. She did not sink in the middle of the slip, but was rather close to the long pier. I should think, to the best of my opinion, she was. I cannot say for certainty. She laid up and down the slip. I think she was angling in the slip, the stern towards the Fulton ferry; she was not angling a great deal, I should think; the stern was within 10 or 15 feet from the end of the short pier where I was standing. I knew Brady then. I am an Irishman. Did not see Brady there. Have had different conversations with Brady about the matter; couldn't say how many. It was some two or three months after before I saw him; there was some talk then. I told him what I saw. I have never had any other talk with him. I have

not given the matter any thought since that time. I came here by Mr. Brady's request from Washington street, Brooklyn; there my barge is. Don't know where the Owen Gorman is. I had known her some 3 or 4 years prior to the transaction. I have testified. I have followed boating since 1847. Have never talked with any one except Brady; there might have been some one on the long pier besides myself. I did not see any line thrown to the short pier.

HUGH JAMES.

Sworn to, before me, this 19th day of August, 1858.

C. A. DAVISON,
Notary Public.

Daniel McAuley. I was on business for another man getting canal boats discharged. I have seen the barge Owen Gorman; I remember her in the month of April, 1856. I saw her first in the tow of the steamboat New Philadelphia at Perth Amboy; from Perth Amboy the tow came to New York. We stopped at some place on the North river. When we came into the East river we stopped at the Atlantic dock. The barge Owen Gorman was landed between Washington and Adams street, Brooklyn. I was standing on the next boat to her at the time she was being landed; the boat next to the steamboat; she was landed at the pier above Washington. There is a short pier at Washington street, and then this pier above where the tow was landed; the long pier was up the river to the east of the short pier. The Owen Gorman landed head on to the end of the pier, *that is the long pier. I saw lines thrown on the long pier to a man by the name of Breslin.* I saw the captain of the Owen Gorman, Pete or Patrick Campbell, Bernan Kelly, and the other gentleman, I don't know; they were all standing on the deck of the Owen Gorman. No other lines were thrown out to any other pier than to the one I mentioned. The Owen Gorman was landed pretty easily there; pretty carefully. I did not at any time see her at the short pier. It is about fifty or seventy-five feet between the long and the short pier.

There was a vessel at the long pier when the Owen Gorman was landed. There was a canal boat laying at the short pier. The tide was ebb, it had run down about two hours. The name of the boat I was on was the Anne Lyons. My business is discharging coal. I am 20 years old. I don't know how many years and months it is now since the Owen Gorman was sunk. I am an Irishman; I have been acquainted with him since last October, which was the first time he spoke to me about this matter. I had no conversations with any one before about this matter. I did not see Brady around, the day of the accident, at all. I did not tell Mr. Brady at any time, since I have known him, all I knew about this affair; I talked to Mr. Kelly once. Kelly is a stevedore. I talked to Kelly last winter.

I have never thought of the matter except on those occasions; had no interest in the Owen Gorman. I told Kelly once what I saw. I told him last winter, before the first trial. Never told any one else I was attached to the steamboat. My vessel wasn't there. I came up with the tow. I wasn't all to any vessel. I was looking for work. I live at 279 Monroe street; my business is that of a stevedore. My recollection is very distinct about the landing of this boat. The tow approached head towards the end of the pier. The tow turned in when it got near to the end of the pier. There was a line thrown from the Owen Gorman before she was cast off. She went bows on to the end of the pier. She was about six feet of the end of pier when she was cast off, and sure of it; the pier may be 30 feet wide. She came to at the end of the pier, nearest the east side of the pier. It was from five to ten feet from where she came to, to the south side of the pier. Know the pier; have known *known* four or five years. I went on with the tow. The tow was from five to twenty-five minutes at the pier before she went on. When the tow left, we left the Owen Gorman. There they were trying to haul her into the slip. I knew nothing about her sinking; they had not got around the end of the pier when I went away. I can't say whether the steamboat made more than one attempt to land; she might, and might not. There was no vessel lying at the end of the long or short pier. I saw the line chucked ashore on the dock; saw a man take in the dock; did not see them take a turn with it around a spile; my memory is distinct about the manner in which the Owen Gorman came to. I am sure she came to. I am sure she came to at the long pier. I am certain of it. Don't know where she hauled.

DANIEL McAULEY.

Subscribed and sworn to before me, 25th of August, 1858.

WASHINGTON MURRAY,
Notary Public.

We hereby consent that the foregoing depositions may be used in evidence upon the trial of this action, with same force and like effect as if the same had been taken de bene esse under the statute (all legal objection in irrelevancy or of testimony reserved), and we also waive the filing of the same.

Dated September 6, 1858.

CAMBRIDGE LIVINGSTON,
Proctor for Claimant.

United States Circuit Court.

PATRICK F. BRADY, appellant,
v.
THE STEAMBOAT NEW PHILADELPHIA, respondent.

Cornelius Bogart, testified.

I reside at 25 Washington street, Brooklyn. I am wharfinger on Waydell & Co.'s yard, Brooklyn. Can't say that I know the barge at all, or the New Philadelphia. I have seen a boat they call the "Owen Gorman;" don't know it; was here, and did not see her name.

Question. Did you on the 17th of April, 1856, see the Owen Gorman, if so, where?

Objected to on the ground that the witness has already stated that he did not know the Owen Gorman.

Answer. I think it was on the 17th of April, 1856, that I saw a steamboat fetch the Owen Gorman near the dock, and throw a line from the barge to the short pier. This pier was at the foot of Washington street. I could not say that they made it fast. This was about 12 o'clock, then I left for my dinner, and did not see her until one o'clock or after. I saw her again; then I saw her in a triangular position across the slip and sunk, with her hatches floating. I could tell very little else about her. The captain got his clothing and provisions out on our dock.

Cross-examined.

I was standing midway the pier when she came up at foot of Washington street. I could not swear that it was the Owen Gorman or the New Philadelphia, as I did not see her name. I think the steamer backed right out away from her before I left for my dinner. I did not see but one small line thrown from the barge; don't know who threw it nor who caught it. I judged that it was on the 17th of April, 1856, by my own recollection; could not tell what day it was or what month. The occurrence of the barge sinking brings to my mind the time; cannot tell the exact time; have not talked with any one, when I came here, about the matter. Mr. Babcock came there to see me, and asked me about the occurrence. I told him that I knew a barge was sunk there. I told him that I recollected that a barge was sunk. I believe the words Mr. Babcock used were, that he wanted to know if I knew anything about the barge. I told him I did; did not say anything else of any consequence. I never conversed with him or any one else till I came to the office.

Re-examined direct.

I think it was the Owen Gorman, because I am certain, I saw her there before; I think I saw her there before. I have no doubt the

barge was the Owen Gorman, the barge from which the line was thrown. The barge was twenty to twenty-five feet from the end of pier; this was about 12 o'clock. That was when the line was first thrown out from the dock. I did not notice her at any other time. I left about that time, that is, when the line was first thrown to the dock.

CORNELIUS BOGART.

Sworn to before me this 29th day of September, 1858.

WASHINGTON MURRAY,
Notary Public.

The President of the United States of America, to R. P. Kane, Esq., counsellor at law of Philadelphia in the State of Pennsylvania, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents, do give you full power and authority, diligently to examine upon their corporal oaths, or affirmations, before you to be taken, and upon the interrogatories hereunto annexed,

Patrick Campbell and John Campbell as witnesses on the part of the appellant in a certain cause now pending undetermined in the Circuit Court of the United States of America for the Southern District of New York, Second Circuit, wherein Patrick F. Brady is appellant, and the steamboat "New Philadelphia," The Camden and Amboy Railroad Company are respondents.

And we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to C. D. Burrell, 49 Wall street, in the city of New York, as soon as may be convenient after the execution of this commission; and that you return the same, when executed as above directed, with the title of the cause indorsed on the envelope of the commission.

Witness, the Honorable Samuel Nelson, Esq., judge of the Circuit Court of the United States, at the city of New York, this 30th day of August, in the year of our Lord one thousand eight hundred and and of our independence the seventy-

KENNETH G. WHITE,
Attorney.

Instruction to Commissioners.

Annexed to the commission is an extract from the statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample

Instructions:

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by the *commissioner* named therein.

III. The acting *commissioner* will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"*You do swear*, that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth. *So help you God.*"

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon, and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "*You do swear in the presence of the ever living God*," and while so swearing, he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "*You do solemnly, sincerely, and truly declare and affirm*," omitting the words, "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of *witnesses*, produced, *sworn* (or *affirmed*) and examined, the day in the year one thousand eight hundred and at under and by virtue of a commission issued out of the in a certain cause therein depending and at issue between *defendant* as follows:

A. B. of (*insert his place of residence and occupation*) aged years and upwards, being duly and publicly *sworn* (or *affirmed*) pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows: First—*To the first interrogatory he saith, &c.* [Insert the witness's answer.] Second—*To the second interrogatory he saith, &c.*, and so on throughout.

If he cannot answer, let him say that *he knoweth not.*

V. If there be any cross-interrogatories, the witness will go on thus:

First—*To the first cross-interrogatory he saith, &c.*, and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of 18 before

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be indorsed by the acting commissioners, in this manner:

"At the execution of a commission for the examination of witnesses, between *defendant* this paper writing was produced and shown to (*insert the witness's name*) and by him deposed unto at the time of his examination, before

Commissioner.

VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath and certify thereto.

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the deposition be subscribed by the interpreter as well as by witness, and certified by the acting commissioner, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 18 before

Commissioner.

X. The *commissioner* will make return on the back of the commission by indorsement, thus:

"The execution of this commission appears in certain schedules hereto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions, and exhibits, must be folded into a packet and bound with tape. The acting commissioners are to set their seals at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus:

To Esquire, clerk of the at

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the

manner in which it is to be returned, then it must either be delivered to the court *by one of the acting commissioners personally*, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath, before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following indorsement thereon:

"Deposited in the post-office, at this day of 18 , by me,

Commissioner."

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following indorsement:

"Deposited in the letter bag of the now lying at and bound for the port of New York, this day of 18 , by me,

Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call on his arrival at this place, upon who will direct him as to its delivery.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY, appellant,
against
THE STEAMBOAT "NEW PHILADELPHIA," her tackle, &c., respondents.

Interrogatories to be administered to Patrick Campbell and John Campbell, of Philadelphia, Pennsylvania, witnesses to be produced, sworn, and examined in a cause pending in the above court, wherein Patrick F. Brady is appellant and the steamboat "New Philadelphia" and the Camden and Amboy Railroad Company are respondents:

First. What is your name, age, and occupation, and how long have you been engaged in such occupation?

Do you know the libellant?

Second. Do you know the barge "Owen Gorman?" If so, state how long you have known her?

Third. Were you employed in any capacity on board the Owen Gorman, on her voyage from Richmond to New York, in the month of April, 1856? If so, in what capacity? Was said barge taken in tow on her arrival? And if yea, by what boat, and when was she so taken into tow, and where was said barge landed?

Fourth. Where were you when said barge was landed, and how long did you so remain? If you shall state that said barge was landed at the foot of Washington street, please state how many piers there are at the foot of said street, what is the distance between said piers, what is the difference, if any, in said piers as to length, and which pier is the longest. At what pier was the Owen Gorman landed? In what manner was she landed? Did she at any time subsequent to her arrival touch the short pier?

If you shall state that said barge sunk, state where and in what position, and in what position as regards the short pier. Was there any vessel at the long pier, and if so, in what position in respect to said pier? Was there any vessel at the short pier, and if so, in what position in reference to said pier? How long after she was landed did the Owen Gorman sink? Who were present when she was landed? What was the state of the tide at the time of her being landed? Was any line thrown to the long pier? If so, by whom, and to whom was it thrown?

Fifth. Do you know of any other matter or thing material, which may tend to the benefit or advantage of the libellant? If so, state the same fully as if you were especially interrogated thereto.

CHARLES D. BURRILL,
Proctor for Appellant.

Settled subject to all legal objections. Dated August 30th, 1858.

C. LIVINGSTON,
For Respondents.

Indorsed: Circuit Court, Southern District of New York. Patrick T. Brady, appellant, *v.* Steamboat "New Philadelphia," &c. Interrogatories. Charles D. Burrill, proctor for appellant. Due service of a copy of the within interrogatories is hereby admitted. 24th August, 1858.

United States Circuit Court.

PATRICK F. BRADY, appellant,
against
THE STEAMBOAT NEW PHILADELPHIA,
her tackle, &c., respondents.

Cross-interrogatories to be annnexed to the Commission in this Cause.

First cross-interrogatories. How long have you been acquainted with Patrick F. Brady? How long with the Owen Gorman? How long have you been attached to the Owen Gorman, and what are you now doing? Had you any, and what, interest in the Owen Gorman or her earnings? Were you ever examined as a witness in this action? When were you last in New York? Have you ever been in New York since the trial of this action, with the knowledge of Brady? Were you there at his request to be examined, and if so, why were you not? Did you ever talk with any one in reference to this case, and if so, to whom, when, and where? State specifically.

Second cross-interrogatories. If you have stated that the Owen Gorman landed at the long pier, state how the bow approached the pier—from what direction. What part of the pier was the Owen Gorman landed at? If from the side, how far from the end of the pier? If at the end, what part of the end, and nearest to which side? How did the Owen Gorman approach the pier, broadside, bows on, or how otherwise? How near was she to the end of the dock when she was cast off? Was there more than one attempt to land? If yea, how many? How many vessels were lying at both piers, and what particular parts of the pier were they lying, and what description of vessels? Were there any at the end of the long pier? What particular part of the slip did the Owen Gorman sink? What position did she hold to the pier when she did sink? State particularly.

Third cross-interrogatory. Do you know any other thing material or necessary for the respondents'? If yea, state the same fully.

C. LIVINGSTON,
Respondents' Proctor.

Settled subject to all legal objections.
Dated August 30th, 1858.

C. D. BURRILL,
For Libellant.

Indorsed: Circuit Court of the United States for Southern District of New York. Patrick F. Brady, appellant, *against* The Steamboat New Philadelphia, her tackle, &c. Commission. Charles D. Burrill, proctor for appellant.

The execution of this commission appears in the schedules hereunto annexed.

ROBERT P. KANE,
Commissioner.

Indorsed: United States Circuit Court. Patrick F. Brady *v.* The Steamboat New Philadelphia. Cross-interrogatories. C. Livingston, proctor for respondent.

Deposition of witnesses produced, sworn, and examined on the first day of September, in the year one thousand eight hundred and fifty-eight, at the office of Robert P. Kane, Esquire, in the city of Philadelphia and State of Pennsylvania, under and by virtue of a commission issued out of the Circuit Court of the United States for the Southern District of New York, in a certain cause therein depending and at issue between Patrick F. Brady, appellant, and The Steamboat "New Philadelphia and the Camden and Amboy Railroad Company, respondents and appellees, as follows:

Patrick Campbell, of the city of Philadelphia, boatman, aged about thirty years, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the appellant, the said Patrick F. Brady, doth depose and say, as follows:

First. To the first interrogatory he saith:

My name is Patrick Campbell; I am thirty years of age, or thereabouts, as well as I can tell; I am by profession a barge or boatman, and was engaged therein until within the last ten months, during which time I have been out of employment and living on my savings; I know the libellant, Mr. Brady.

Second. To the second interrogatory he saith:

I know the barge Owen Gorman; I have known her since the spring of the year 1855.

Third. To the third interrogatory he saith:

I was employed as the master or captain of the Owen Gorman on her voyage from Richmond to New York in the month of April, 1856, and was on board the same in that capacity during the voyage. The said barge was taken in tow, on her arrival at New Brunswick, by the steamer New Philadelphia; she was taken in tow on the afternoon of the 16th of April; to the best of my belief, on that day, she was towed by the steamboat New Philadelphia as far as Brooklyn, and was landed at the foot of Washington street.

Fourth. To the fourth interrogatory he saith:

I was on board of the said barge when she was so landed, and remained on board of the same until she sank; at the foot of Washington, where the barge Owen Gorman was landed, there are two piers; these piers are of unequal length, and are about fifty feet apart, or perhaps the distance between them is even greater. The longest of the two piers is on the side of the slip next to Adams street, and is over one hundred feet longer than the other pier. The Owen Gorman was landed at the long pier; she was landed in the usual way,—by throwing out a line, which was taken by a man on

the pier; she did not at any time subsequent to her arrival touch the short pier, nor did she come in contact with the long pier.

The barge sank inside of the long pier, rather slanting out into the slip with her bow in towards the pier. As regards her position in reference to the short pier, at the time she sank, I would say that that she sank alongside of the long pier, with her bow within a few feet of that pier, probably not more than three or four feet from it, and that slanting out into the slip; as I have said, her stern, I should think, was about fifteen feet from the short pier; no part of her, in my opinion, was nearer than fifteen feet to the short pier; there was a schooner lying on the inside of the long pier, about halfway up the slip and made fast to the pier, lying alongside of it. There was a light barge lying alongside of the short pier on the inner side of the pier, I mean on the side towards the long pier, and I think that there was another barge at the end of the short pier. The Owen Gorman sank in about twenty minutes after she was landed. When she was landed there were present, Mr. Braceland, the stevedore, Mr. Kelley, Daniel McCauley, John Campbell, and several others whose names I do not know; Hugh James was on the short pier, and he saw the Owen Gorman landed at the long pier. At the time the Owen Gorman was landed a strong ebb tide was running. When the Owen Gorman was landed I threw a line to Mr. Braceland, who was standing at the end of the long pier, and who took the line, and so landed the barge.

Fifth. To the fifth interrogatory he saith:

I do not know of any other matter or thing material which may tend to the benefit or advantage of the libellant.

First cross. To the first cross-interrogatory he saith:

I have been acquainted with Patrick F. Brady for six years; I first was employed on the Owen Gorman in the spring of 1855, and remained attached to that barge until she was sunk, in April, 1855. I again went on board of her as captain in July of that year, by which time she had been raised and repaired, and continued to have charge of her until some ten months since; I am now without employment, and will be so for some time to come, unless business revives. I had no interest at any time in the Owen Gorman or her earnings. I have been examined as a witness in this action; I was last in New York some two weeks ago; I left Philadelphia on the night of the 16th of this present month and returned on the 18th; I will not be positive as to dates; I left Philadelphia on a Monday and returned on a Wednesday, spending the intermediate Tuesday in New York; it was since the trial of this action, and with the knowledge of Mr. Brady and at his request to be examined. I was not examined, although I went on for that purpose; I was ready and willing to be examined on the Tuesday which I passed in New York, but I was forced to leave for Philadelphia the next day; I could not remain, as I had a place in

view, and was very anxious to get employment; I have talked in reference to this case with persons in New York and Philadelphia; with Mr. Brady and his counsel; with the commissioner before whom this testimony is taken, and in casual conversation with persons; I cannot now recall with whom.

Second cross. To the second cross-interrogatory he saith:

As the Owen Gorman landed at the long pier, she approached that pier her bow towards the end of the pier, her stern slanting outwards; the Owen Gorman was landed at the end of the long pier, about the middle of the end, approaching it bows on and slanting as I have said. When she was cast off she was about ten feet—from six to ten feet—off the end of the dock; there was only one attempt to land her; I threw out the line and Mr. Braceland took it, as I have already said. There was a schooner lying at the long pier, on the inside, halfway up the slip, alongside of the pier; there was a light barge lying alongside of the short pier, on the inner side of the pier; and, to the best of my recollection, there was another barge at the end of the short pier. There may have been other vessels at these piers, but I do not now remember them; there were none at the end of the long pier. When the Owen Gorman sank, she was about thirty feet from the upper end of the slip; she slid afterwards further down the slip; when she sank, her stern was slanting towards the shorter pier, he bow being in towards the longer pier and her stern being, I suppose, about fifteen feet or even more from the shorter pier.

Third cross. To the third cross-interrogatory he saith:

I do not know any other thing material or necessary for the respondents.

PATRICK CAMPBELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this the first day of September, 1858, before

ROBERT P. KANE,
Commissioner.

John Campbell, of the city of Philadelphia, boatman, aged twenty-one years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the appellant, doth depose and say, as follows:

First. To the first interrogatory he saith:

My name is John Campbell; I am between twenty-one and twenty-two years of age; I follow the trade of a boatman, and have been following that business for the last five or six years; I know the libellant, Mr. Brady.

Second. To the second interrogatory he saith:

I know the barge Owen Gorman; I have known her for the last six years; for some two or three years before Mr. Brady purchased her.

Third. To the third interrogatory he saith;

I was employed as one of the hands on the Owen Gorman on her voyage from Richmond to New York in the month of April, 1856; and was on board the same in that capacity during the entire voyage. The barge was taken in tow at New Brunswick on the 16th of April by the steamboat New Philadelphia; the steamboat towed her to Brooklyn and landed her at the foot of Washington street.

Fourth. To the fourth interrogatory he saith:

I was on board of the barge Owen Gorman, on the bow of that barge, when she was landed at the foot of Washington street. I remained on board of her until she sank. There are two piers at the foot of Washington street, where the Owen Gorman landed. These piers are about fifty feet apart, and one of them is more than one hundred feet longer than the other; the long pier is the one nearer to Adams street. The Owen Gorman was landed at the end of the long pier; she was landed with a line, which was thrown out by her captain, Patrick Campbell, and was caught by a man named Braceland, who stood on the pier. At no time subsequent to her arrival did the barge touch the shorter pier.

The Owen Gorman sank inside of the long pier; her bow was towards the pier, and she slanted out into the slip. She sank alongside of the long pier, her bow being about five or six feet from that pier, perhaps not as much. Her stern, which reached out into the slip slantwise, was about fifteen feet distant from the short pier. There was a vessel at the long pier, a schooner. This schooner was made fast to the long pier; she lay alongside of that pier, about half way up the slip. There were two barges at the short pier; one lay alongside the pier, on the inside; and the other lay across the end of the pier. It was some twenty minutes after she was landed that the Owen Gorman sank. There were present when she was landed Mr. Braceland (the stevedore), Bernard Kelly, Patrick Campbell, and two other young men, whose names I do not recollect; there were several standing on the dock. When the barge was landed, it was running a strong ebb-tide; there was a line thrown to the long pier; it was thrown by Patrick Campbell to Mr. Braceland, the stevedore.

Fifth. To the fifth interrogatory he saith:

I do not know of any other thing material, which may tend to the benefit or advantage of the libellant.

First cross. To the first cross-interrogatory he saith:

I have been acquainted with Patrick F. Brady for the last five or six years; and, for the same length of time I have known the Owen Gorman. I was attached to the Owen Gorman during her voyage from Richmond to New York, in April. I had not been attached to her before that time, and have not been since. I am now following the trade of a boatman. I have not had at any time any interest in the Owen Gorman or her earnings. I was once before this examined as a

witness in this case. I was last in New York in the month of June last; I was attached to a boat which went there with a load of coal. I have not been in New York since the trial of the case, or since I was examined as a witness, with the knowledge of Mr. Brady, and never at his request to be examined. I have talked with the commissioner who takes this testimony in reference to this case, at his office; I do not recollect any other person with whom I have talked about it.

Second cross. To the second cross-interrogatory he saith:

The bilge or bend of her starboard bow was towards the long pier. As the Owen Gorman was landed, the barge stretched out stream, slanting towards the short pier or rather in the direction of the short pier. The Owen Gorman was landed at the end of the long pier, at that portion of the end towards the short pier. She approached the pier bows on, that is, with the bend of her starboard bow next the pier. I should think she was some eight or ten feet from the end of the dock when she was cast off. There was only the one attempt to land her. I noticed three vessels at the two piers, but there may have been more. These three were those I have already mentioned: a schooner, on the inside of the long pier, about halfway up the slip, and two barges or boats, one alongside of the short pier on the inside, and one at the end of the short pier, across the end. The Owen Gorman sank about thirty feet from the end of the slip; she was dragged up that far when she was found to be sinking. She sank with her bow in towards the long pier, slanting across the slip; her stern towards the short pier. She afterwards slipped down the slip for some distance from where she first sank.

Third cross. To the third cross-interrogatory he saith:

I do not know any other thing material or necessary for the respondents.

JOHN CAMPBELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the sixth day of September, 1858, before

ROBERT P. KANE,
Commissioner.

At a stated term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Saturday, the 2d day of October, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: The Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

PATRICK F. BRADY, appellant and libellant,
agt.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c., THE CAMDEN AND AMBOY RAILROAD COMPANY, claimants and respondents.

This cause coming on to be heard upon the appeal taken by the libellant from the decree of the District Court of the United States, for the Southern District of New York; and upon the pleadings and proofs, and the advocates for the respective parties, having been heard, and due deliberation having been thereupon had by the court, it is now ordered, adjudged, and decreed by this court, that the decree of the aforesaid District Court, dismissing the said libel, be and the same is hereby in all things reversed; and it is further ordered, adjudged, and decreed, that the libellant in this action do recover against the steamboat New Philadelphia, her machinery, tackle, apparel, &c., The Camden and Amboy Railroad Company, the damages sustained by the libellant and owner of the barge Owen Gorman, by reason of the collision mentioned in the libel in this cause, together with costs in this and the District Court; and that it be referred to Kenneth G. White, Esq., United States commissioner, to ascertain the amount of such damages, and to report thereon to the court with all convenient speed.

S. NELSON.

Filed October 2d, 1859.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY, appellant,
vs.
THE STEAMBOAT "NEW PHILADELPHIA," her tackle, &c., respondent.

Reference under decree and order of reference dated October 2d, 1858.

October 19th, 1858, met and adjourned to the 20th of October, at 10 A.M.

October 20th, 1858, present counsel for respective parties.

William J. Babcock, sworn on part of appellant.

Am a wrecker. I was employed by Capt. Campbell, of barge Owen Gorman, to raise her; she was sunk at the foot of Washington street, Brooklyn. I raised her. After I raised her, I notified Capt. Campbell, and he notified Mr. Brady. Mr. Brady came over to Red Hook Point, Brooklyn. I notified him that the boat was ready for discharging. Mr. Brady thought she was not up far enough to dis-

charge. The barge laid some fifteen or twenty days, and did nothing at all, waiting for them to discharge the cargo. I finally discharged the cargo, washed the coal off, and put the same on the barge Gen. Washington. I paid for hiring the barge Washington ten and a half days $6 per day; I charged for raising the barge Gorman $450. I paid also for three different towages of the barge Washington $11. I paid for 24 days dockage on the barge Owen Gorman, from the time she was beached until she was discharged, $6. I paid for the dockage on the barge Gen. Washington, while discharging coal, $3 75. My charge to Mr. Brady for towing the barge to railway dock and putting her in same was $50. I charged Mr. Brady for discharging the cargo, which took 9 days, $45. I received two checks from Mr. Brady, amounting to $704 21, for the services I have spoken of. I received the money on this bill (bill produced and shown witness, for $45), but whether it is included in the two checks I have mentioned I cannot tell. The charges I made were reasonable and proper charges (Exhibit No. 1 produced). The signature to the receipt is in my handwriting (exhibit offered in evidence). I think the amount of the bill ($45) is included in the item "To unloading, washing, and putting coal on barge Gen. Washington, $166 21." The bill of $45 is for my personal services in attending to the work. The bill of $45 was rendered at the time of the giving of the last check to me. I think the bill of $45 was included in the last check. The disbursements made by me were reasonable and proper.

W. J. BABCOCK.

Sworn to before me, this 20th day of October, 1858.

KENNETH G. WHITE,
U. S. Commissioner.

Adjourned to Monday, October 25th, at 11 A.M.

Monday, October 25. Present, counsel for respective parties.

Divine Burtis sworn on part of appellants.

Am a shipwright, and was in 1856. Did work to the canal-boat Owen Gorman in July, 1856. (Bill shown witness.) This is my bill; it was paid to me; I believe it to be correct. The charges in it are proper charges; the work charged in the bill was actually rendered on the boat, at the date mentioned on the bill.

Cross-examined.

Know of my own knowledge that all the work was done. Can't remember what part of the vessel the work was done, except by the bill. We caulked her. The vessel was overhauled where she was damaged, wherever she needed it.

Question. State the different parts of the Owen Gorman that were repaired by you.

Answer. It is impossible for me to say whether the plank put in were exactly amidships or 15 feet from amidships; they might have been pretty well towards the end, some of them. The oakum that was used was for bottom, and so was the pitch; and the spike was for putting the plank on that were put in, and fastening up those that were started. She laid on the ways two days. The Georgia pine was for the ceiling. Can't tell what door the hinges and screws went on to. The 90¼ days' work was for putting on the plank and spiking and caulking, and doing this general work; the 21¼ days' work, at a lower price, is for part of the same work; the 38 lbs. of bolts were for butt bolts; the 42 lbs. of screw bolts were for the bilges or sides, or both. The first item was for hauling on the ways. I superintended the work principally myself; my foreman lines out the plank, gets out the stuff, and I see that the work is done. I can say of my own knowledge, that all this work was done on the Owen Gorman. The larboard side was the worst side, if I recollect. I may be wrong. She lay on the beach. When I first looked at her to see where the water come in she laid at Red Hook. This is the first I saw her, I believe. Did not do anything to her till we got her to the ways. Hauled her up first; then we cut out the pieces of plank, where they wanted to come out. I repaired her on the bottom and on the sides. I found several of the plank broken and some started. Know that I did considerable work on the inside. Don't recollect whether I did any work on deck. I can recollect some of the particulars without the bill. Think most work was done on larboard side; one side was worse than other, but can't say which it was. I did everything necessary to make her tight; everything I thought necessary I did. Can't say whether all the pine was put on one side of the vessel. The work that I did was for damage. I kept the record of the men's time myself; I keep the time on a pass-book and give it to my clerk, and he pays the men every Saturday night. He makes the bill out. Pass-book states the name of the man, the time, and the name of the vessel the work is done on. I caulked both sides; I might have put a piece on the other side, but can't say whether I did or not. I don't say that the materials charged in the bill were used in repairing one side of the barge. Most of the lumber was used on the side that was broke in; I don't pretend to say positively that any lumber was used on the other side.

Question. Was three-quarters of that lumber charged in the bill used on one side of the vessel?

Answer. I think there was, but I can't recollect positive.

Re-direct.

The side was the worst where the planks were broke. I can't be positive whether that was the larboard or starboard side. Don't know how many holes she had in her. I know her bottom was bent

up considerable; one pretty large break near amidships. When I saw her on the beach her cargo was out.

Cross-examined.

I don't think I measured out the plank in the bill myself; did not measure any of the material myself. Richard Burtis was my foreman at that time. These quantities of materials are entered in a small book he has, and he hands it to the clerk, and he enters it in the scratch-book first, and the bills are made out from this book. I might have had another man for foreman of this particular job.

DIVINE BURTIS.

Sworn to before me, this 25th day of October, 1858.

KENNETH G. WHITE,
U. S. Commissioner.

Joseph H. Van Winkle, sworn on part of libellants.

Recollect the Owen Gorman; was the consignee of her cargo of coal at the time she was sunk. I made a claim for damages on the cargo; the cargo was finally delivered to me; it was about 7½ tons short. The coal was all damaged when it was delivered to me. Mr. Brady, or some one that represented the boat, and I agreed that it should be left to two men to decide what the damage was.

(This testimony objected to by counsel for respondents; overruled and exceptions taken.)

The two men were William Spence and T. W. Young, old coal dealers. They made an award (paper shown witness), and he is asked what paper is it.

(Question objected to by counsel for respondents; overruled and exceptions taken.)

Answer. This is the paper signed by the parties who estimated the damages. The signatures are their original signatures. Mr. Brady paid me the amount of damage estimated by the referees. The amount was $231 12. This is the receipt I gave him (receipt introduced in evidence, and marked Exhibit No. 2, on part of appellants), and the money was paid on the date of it, the 6th of August, 1856. I was allowed $38 62 for the amount that fell short. It was allowed me at the rate of $5 15 per ton. That was what I had to pay for the coal. It was worth that when it was put on board the boat. It would have been worth that per ton if it had been delivered to me in good order when the barge first arrived on or about the 17th day of April, 1856. I was allowed 55 cents per ton, or about that, for the difference between the value of the coal in good order when it ought to have been delivered, and when it was delivered, considering the coal to have been in good order at both periods. Coal had fallen in the interim 90 cents per ton, this quality of coal. They only allowed me 55 cents; this amounted to $110. I was allowed

35 cents per ton for the damage done to the coal which was delivered. This amounted to $70. The coal was delivered to me at a coalyard I had on Hamilton avenue near the ferry.

Question. What place, if any, was mentioned in the agreement for the carriage of the coal, as the place of its delivery?

(Objected to on the ground that the agreement was in writing, and the agreement speaks for myself.)

Counsel for respondents put this question to witness.

Question. Was this agreement in writing?

Answer. This much of the agreement was in writing: "The Port of Brooklyn."

(Counsel for respondents objects to the question.)

Question. Is there any usage in regard to the place where the cargo of coal is to be delivered, where the bill of lading or written agreement specifies only the port at which the cargo is to be delivered without naming the place in such port?

(Objected to. Objection overruled and exception taken.)

Answer. There is such a usage. It is for the parties who sell the coal after it is shipped, to telegraph, or, in some other way, send word to a person in New Brunswick to direct the captain where to bring his cargo when he gets to New York or Brooklyn. The barge delivers the coal to the place thus designated. That was done in this case by a verbal request of mine. The seller of the coal directed that it should be delivered at the foot of Washington street, Brooklyn.

(The whole of the above answer objected to as immaterial; stating things as facts which don't come within his own knowledge.)

I was allowed $12 50, the difference in the cartage of the coal between the place where it was delivered and the place where it should have been delivered, either the foot of Adams or Washington streets, Brooklyn. The difference in cartage amounted to more than that. The damage to the coal amounted to more than the 35 cents per ton allowed me.

(The award of the referees offered in evidence by the counsel for appellant objected to. Objection sustained and exception taken.)

The coal was delivered to me about the 6th August, 1856.

Cross-examination.

On the 17th of April, 1856, and for a week previous, I did business in the city of Brooklyn. Did not see the coal delivered on board the barge. I saw part of it taken out. I did not see the whole of it taken out. Don't think I ever saw the coal till after the boat was sunk. The usage I have spoken of exists in cases where the coal is purchased after it is shipped; I do not swear that it is done in all cases.

Question. Do purchasers of coal which has been shipped always

telegraph directions as to the place of the delivery of the coal in the manner you have stated in your testimony?

Answer. I have never stated such a thing in my testimony.

Question. Do sellers of coal which has been sold after the same has been shipped always telegraph directions as to the place of the delivery of the coal in the manner you have stated in your testimony?

Answer. To the best of my knowledge and belief they do, unless the coal has already passed that place I mentioned on the canal. If she has passed that place the coal is to be delivered at whatever place the barge designates at the expense of the seller. I swear to this as having been the usage in my case in every instance, and as also the usage of all other persons that I know.

Re-direct.

I was a coal dealer up to the first of July, 1858, and had been in such business for five years preceding that time in Brooklyn.

J. H. VAN WINKLE.

Sworn to before me this 25th day of October, 1858.

KENNETH G. WHITE,
U. S. Commissioner.

October 27. Present, counsel for both parties. Counsel for respondents offers that the amount of damages to be adjusted by Kenneth G. White, Esq., in this cause be found at the sum of two thousand and twenty-five dollars, including any interest allowable, and that he report therefor.

Divine Burtis recalled on part of appellants.

Since my examination the other day, I have looked at my memorandum book with reference to the measurement of the timber, and have refreshed my memory by the examination, and I found that I took the account of the measurement of the timber myself personally. I can't say whether the amounts stated in the bill correspond with the entries in the memorandum book. I made the entries in the memorandum book myself. It was Mr. Yates's duty to transcribe those entries into the scratch book and my book of account.

Cross-examined.

I might possibly have missed the measurement of a piece or two, but generally it was mine. All that is in the book was measured off for the Owen Gorman, July 23d, 1856. One piece oak 10 ft. long, 4+9; one 9 ft. long, 4+9; one 19 ft. long, 4+9; one 8 ft. long, 4+9; one 9 ft. long, 4+11; 243 ft. oak plank; 72 ft. Georgia pine; 240 ft. oak plank; one 8 ft. long, $3\frac{1}{2}$+9; one 17 ft. long, 4+9; one 8 ft. long, 4+9; one 10 ft. long, $3\frac{1}{2}$+9; one 16 ft. long, $2\frac{1}{2}$+11;

one 4 ft. long, $2\frac{1}{2}+12$; one 16 ft. long, $2\frac{1}{2}+7$; one 8 ft. long, $2\frac{1}{2}+10$; one 10 ft. long, $2\frac{1}{2}+8$; 174 ft. oak plank; 123 ft. oak plank; one plank 24 ft. long, $2\frac{1}{2}+11$; one 14 ft. long, $2\frac{1}{2}+8$; one 15 ft. long, $2\frac{1}{2}+10$; one 16 feet long, $2\frac{1}{2}+9$; one 23 ft. long, $2\frac{1}{2}+8$; one 10 ft. long, $2\frac{1}{2}+8$. It may not all be in this book. Sometimes I may be in the yard and not have the book, and then I put it down on a piece of paper and hand it in. I won't swear that there were other memorandums. I can't swear that any other timber was measured off or used for the Owen Gorman than that I have read off. It is just like my not remembering about the book till I saw it. I can't tell the value of the material I have read off. The only way to get at it is to add it up and find out how many feet there are, and at so much per foot. It was worth from 4 to 6 cents per foot. There is a difference in it, some is better than others. Can't tell which was worth 4 and which was worth 6 cents. If I could see the plank I could tell you. Some of the 4 inch stuff and the pine plank were worth 4 cents. All the $2\frac{1}{2}$ and 3 inch plank was worth from $8\frac{1}{2}$ to 6 cents.

Re-direct.

Question. Whenever you enter measurements of timber on slips of paper or other memoranda, what do you do with them?

Answer. Hand them in to Mr. Yates.

DIVINE BURTIS.

Sworn to before me, this 27th day of October, 1858.

KENNETH G. WHITE,
U. S. Comm'r.

Thomas Yates sworn on part of Appellants.

Am a shipsmith, and was in 1856. In that year was in the employ of Mr. Burtis, in capacity of clerk. (Bill produced.) This bill is in my handwriting, and was made out by me about the time it bears date. The bill was made out from the scratch-book of Mr. Burtis. That scratch-book was kept by myself. I made the entries in the scratch-book of the measurement of timber, and the time of the men from the memorandum-book spoken of by Mr. Burtis, and from the slate that hangs in the office, and also from slips of paper and cards handed to me by Mr. Burtis or the foreman.

Question. In what manner were the charges in this bill entered in the scratch-book?

(Objected to.)

Answer. The bill was made from the scratch-book. The charges in this bill were entered in the scratch-book from the memorandum-book spoken of by Mr. Burtis, and from the slate, cards, slips of paper, or verbal order from Mr. Burtis. I am familiar with the

general character of these charges, and from familiarity with the business am competent to speak of propriety of the charges.

Question. What is your opinion as to the charges in that bill; are they proper or improper?

(Objected to.)

Answer. In the year 1856 the charges were proper. They were the usual and customary charges.

Cross-examined.

The entries from the memorandum-book were made when the work was done. A young man in the office made the entries on the slate. The entries in the memorandum-book may have been transcribed the same day, or the next day, or the day after. I can't swear positively that in this account there are any entries from any slips of paper. Don't think any of the articles were weighed or measured by me. Have been with Mr. Burtis about 9 years. Can't swear that all the entries of materials furnished and work done were transcribed into the scratch-book the same day they were measured or done. I know in fact that all the items between July 21 and July 30th, were transcribed before July 30th.

Re-direct.

The memorandum of the time of the men was furnished me by Mr. Burtis, except on Saturday, when I paid the men; then I ask them how much they have worked on that day, and Mr. Burtis is generally by when I pay the men on Saturday.

Re-cross.

I take the man's word for the amount he has worked that day, with Mr. Burtis sitting by. Can't state whether Mr. Burtis was sitting by on every Saturday when the men were paid in the bill. From the time the men commenced work on the Owen Gorman they went on continuously till the work was done. The work commenced on Monday, July 21st, and worked till July 30th. There were 38 men; 18 men worked on Saturday. The work charged on Saturday is $10\frac{3}{4}$ days at $21\frac{1}{2}$ per day. Have no personal knowledge of the work done or materials furnished, except the on the books.

Re-direct.

Don't recollect any items in the bill that were taken from memoranda on the slate.

THOMAS YATES.

Sworn to before me, this 27th day of October, 1858.

KENNETH G. WHITE,
U. S. Comm'r.

Adjourned to the 1st of November, at 11 A.M.

November 1st, adjourned to the 9th of November, at 11 A.M.

November 9th, adjourned to the 19th of November, at 11 A.M.

November 19th, adjourned to the 23d of November, at 11 A.M.

November 23d, present, counsel for appellants, who offer in evidence two commissions, and the testimony taken under same, which were opened by order of court, dated respectively on the 17th and 23d days of November, 1858, subject to any objections to be made to the same by the counsel for respondents at next meeting.

Adjourned to the 24th November, at 11 A.M.

November 24th, present, counsel for respective parties.

Introduction of the commissions objected to by counsel for respondents, on the ground that after a reference no commission can issue without the order of the court, and no testimony can be offered before the commissioner except what is oral, and such as has theretofore been evidence in the cause.

(Objections overruled and exception taken.)

The first commission objected to, on grounds that the notice was short, and that appellants gave notice for the issuing of a new commission which did supersede the first notice. Counsel also objects to this commission on ground that the interrogations were never settled by any officer having the power to settle the same.

The same objections are made to second commission with these additional objections, to wit: that the second commission was issued without any notice to the appellees, and appears to have been executed by a commissioner different from the one named in the commission, and another objection is that it directs the examination of the same witnesses as in the first commission, and upon precisely the same interrogations. Counsel also objects to both commissions on the ground that they don't appear to have been issued upon notice, nor that the interrogations attached thereto were ever settled upon notice, or that copies of the interrogatories were ever served.

Counsel reserves the right at the next meeting to make objections to specific interrogatories, or specific answers, or the specific manner in which the commissions were executed.

Adjourned to the 26th of November, at 11 A.M.

November 26th, present, counsel for respective parties.

Adjourned to the 4th of December, at 2 P.M.

December 4th, attended and adjourned to the 10th of December, at 2 P.M.

December 10th, attended and adjourned to the 17th December, at 12 M.

December 17th, attended and adjourned.

March 4th, 1859, attended and adjourned to March 10th.

March 10th, attended and adjourned.

March 16th, present, counsel for respective parties.

Thomas Yates recalled on part of appellants, says:

The bill now shown me was made out from the scratch-book and corresponds with the entries in the scratch-book, which scratch-book was kept by me. The entries in the scratch-book from the slate were made as soon as I saw them on the slate. I intended to take them off correctly from the slate, and have no doubt I did so. The entries on the slate related to shipsmith stuff, furnished while I was absent. There was a second slate, which related to oakum, spikes and nails, this was kept in the office. When Burtis handed me a memorandum I made a charge immediately on receiving the memorandum, and correctly. Robert Smith weighed out the spikes, pitch and oakum, and made the entries on the slate. He is dead. He was correct in making his entries—never found him incorrect. The shipsmith stuff included in the bill was furnished by me. This was my own matter; I generally included these in Mr. Burtis's bills, and collected it from him. The shipsmith stuff included in this bill was charged by me, and I know it to be correct. Mr. Betts is my foreman. It is his business to do the shipsmith work for the boats and to enter it on the slate. From those entries I transcribed it.

Cross-examined.

I took all the entries off from the slate myself; can't swear, positively, exactly when. I took them off at all times. The slates were in the office; any one could have written on them that came in the office. So far as the entries on the slate go, I rely upon those entries for my knowledge. Can't swear positively that in every instance I took the entries from the slate, the next day. I would not swear positively that the entries made by Swift were in all cases correct; I never found them incorrect.

THOMAS YATES.

Charles H. Betts, sworn on part of appellants. Am foreman for Mr. Yates, and he is bookkeeper for Mr. Burtis. I do the shipsmith work for Mr. Yates; make the entries of it on a slate in the shop. Those entries are the amount and quantity of material, and also the prices of such articles as we have no stated price for. The entries which I make upon this slate are true and correct entries. Recollect Robert Swift. I have always found him correct in his entries of materials. I know nothing about his work in the office, it did not pass through my hands. I kept account of the materials furnished by Yates, and Swift kept account of the materials furnished in the office.

Cross-examined.

Don't know anything about Swift's entries. No entries are made on the slate except by myself, or under my direction and observa-

tion. Sometimes I told the apprentice boy to make entries. I know every time an entry is made on the slate, it is made within ten minutes after the work is done.

Question. Who made the entries when you were sick?

Answer. I can't tell you, I was not there. I was not sick at the time of this transaction. Don't remember being away from business but one week in eighteen years.

Direct resumed.

The entries made by the apprentice I always examine them afterwards, and if incorrect I correct them.

Re-crossexamined.

Sometimes the apprentice boy weighs the articles when he enters them, but it is all under my supervision.

Bill of Divine Burtis, amounting to $471.60, offered in evidence by appellants, and marked "Exhibit," March 16th, 1859, K. G. W., commissioner.

Introduction of bill objected to.

Objection overruled and exception taken.

Deposition taken under a commission issued on the 17th and executed by Charles B. Henzlett, and filed on the 23d of November, 1858, and heretofore offered in evidence, withdrawn by counsel for appellants.

Counsel for appellees objects to the withdrawal of said deposition.

Overruled and exception taken.

Deposition taken under commission, returned and filed the 21st day of February, 1859, executed by Robert P. Kane, commissioner.

The introduction of this commission objected to on same grounds as the two other commissions, with the further objection that no notice of any kind in relation to the issuing it, or the settlement of interrogatories, or service of copies of the same, was given to the proctors for the respondents, and they had no knowledge of its being issued until after it was returned.

Objection overruled and exception taken.

Adjourned to the 17th, at 11 A.M.

March 17th, 1859. Present, counsel for respective parties.

William Murtagh, sworn on part of Libellant.

Am in freighting business, and was in 1856; been engaged in it some 7 or 8 years between here and Philadelphia. Owned a barge

in 1856 of 214 to 220 tons. Know the Owen Gorman; she is about same as my boat. In 1856 freights were high and plenty. Was acquainted with the market price for the use of boats during that season.

Question. From your knowledge of the market price, what was a fair and reasonable price for the use of the Owen Gorman per day during the season of 1856, say from April to September?

(Objected to, but not as to form.)

Answer. As boats chartered it would be from $12 to $15 per day.

Know the boat Peter McGuire; she was about the same size of Owen Gorman and same class of boat. Know of her being hired that season at $12 per day for the empty boat.

(Answer objected to.)

My boat was hired at the same time and at the same rate. Freights were very plenty at Philadelphia, and boats were scarce and shippers were looking for boats all the time. The demand for boats from here to Philadelphia was good, the best season we have had since.

Cross-examined.

Question. Do you know, of your own knowledge, what the Owen Gorman was earning during that the time she did run that season before the accident?

Answer. She was on her first trip at the time of the collision.

Question. Do you know whether she earned anything or not?

Answer. I do not. All boats of the same capacity earn about the same.

Question. Does it make any difference the kind of employment the boat is engaged in?

Answer. In the grain trade it makes a great difference. The grain trade is worth more than the other.

Re-direct.

When I spoke of the market price of boats, I spoke with reference to the coal trade.

Question. Did the Owen Gorman resume her trips after she was repaired?

(Objected to.)

Answer. She did. She was engaged in carrying coal for the Philadelphia Gas Co., from Philadelphia to New York. She was running all the residue of the season.

WM. MURTAGH.

James D. Shafer sworn on part of Libellant.

Am in freighting business and was in 1856; have been in it about 14 years. Have seen boat Owen Gorman; not particularly acquain-

ted with her; should think she would carry from 214 to 218 tons. She is what is called a Schuylkill boat. Sometimes they are called Philadelphia boats. Freights were good and plenty in 1856, better than they have been since. All I know about the market price of boats that season is what I got for my own and what I heard others say they chartered theirs for.

Question. From your knowledge of the market price of boats, what was a fair and reasonable price for the use of the Owen Gorman per day during that season of 1856; say, from April to September?

(Objected to.)

Answer. I should think about $12 a day for the empty boat; I judge from my own business.

J. D. SHAFER.

George W. Beaver sworn on part of libellant. Was in the freighting business in 1856. Commenced in 1853. Owned barges in 1856; I owned some 14 canal barges. Freights were good and plenty that season. Am acquainted with class of boats known as Schuylkill boats. Am acquainted with the market value for the use of boats for the year 1856.

Question. From your knowledge of it, what was a fair and reasonable price per day for the use of a Schuylkill boat of the capacity of about 215 tons during the season of 1856; say, from April to September?

(Objected to.)

Answer. Fifteen dollars per day. Two dollars and a half less per day for an empty boat.

Cross-examined.

I was first asked to testify in this case yesterday. Do not know Mr. Brady. Do not know the Owen Gorman. Know nothing about what she earned.

GEORGE W. BEAVER.

Libellant rests.

Adjourned. New notice to be given.

March 30th, counsel for respective parties present.

Francis Markee, sworn for respondent. Was a barge-owner in 1856. Knew the barge Owen Gorman. I was boating on her at one time as one of the hands. Was acquainted with the market value of barges in 1856. From my knowledge of the market value of barges during 1856, $6 per day was the outside of what she was worth, or any boat of her class.

Question. From your knowledge, what was the market value of barges for freighting between here and Philadelphia in the coal business?

Answer. In that year freights varied. I don't know anything

about the freighting. I came here to give my opinion of the value of the barge without any men on board. Six dollars a day was the outside of what she was worth without a man on board. I would have been glad to have got it, and many hundred beside me.

Cross-examined.

Was on board Owen Gorman before Mr. Brady got her. Don't recollect the year. Can't say how long I was on board of her. I owned the Jane Preston in 1856. Owned no other boat. Custom-house measurement is about 100 tons. According to my idea, Owen Gorman is 100 ton vessel. Should think she would carry from 200 to 190 tons. Freights varied, some weeks up and some weeks down.

Question. Would the value of the use of the boat depend at all upon the rate of freights in your opinion?

Answer. It may in some cases, when freights are higher boats are worth a little more; when they are lower, not so much.

Question. In what way do you arrive at the value of this barge as fixed by you?

Answer. Because I think she is not worth any more.

Question. Can you give any other reason for fixing the value at $6 a day?

Answer. Not any more reason. My barge run to Philadelphia, New York, and Pottsville in 1856.

Question. Is there any regular market value per day for barges, or does the value depend upon the rate of freight and its being plenty or scarce?

Answer. Freight rules the price; if it is plenty, prices are higher; if it is scarce, it is lower.

Question. Have any account showing what the rates of freight were in 1856?

Answer. I have not.

Question. In fixing $6 per day as the value of this barge, did you consider the rate of freight, or did you estimate it without reference to what the rate of freight was?

Answer. As I stated the case, $6 per day was enough at the best rate of freights at that time or since.

Re-direct.

Question. How were freights that year?

Answer. I don't exactly recollect the rates of freight.

Question. Were they high or low?

Answer. On a moderate scale. They were higher than they are now.

his
FRANCIS + MARKEE.
mark.

Sworn to, before me, this 30th day of March, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

Isaac L. F. Elkin, sworn for respondent. I was in employ of C. A. Hecksher & Co., in 1856, to take charge of their boats; they had about 40. Seen Owen Gorman; know her size, judging from her appearance. Am not certain of her capacity.

Question. Have you any knowledge of the market value of barges during the season of 1856, from 15th of April to 1st August, 1856, in the coal trade between here and Philadelphia?

Answer. I have.

Question. What would be the market price per day for the barge Owen Gorman?

Answer. I should think $5 per day for the boat alone.

Cross-examined.

In 1856, C. A. Hecksher & Co. were in the coal trade. Did not hire any barges that season. They let, perhaps, one or two; I am certain of it. I don't recollect the names of the boats, nor the names of the persons to whom they were let. I had something to do with letting them. I had to do with fixing price with one man. Don't recollect certainly about there being more than one boat. Boats of Hecksher & Co. generally carry their own coal. Don't generally carry on freight for others. Would not swear positive what the freights were that season. I had a knowledge of them at the time, but don't recollect what they were. Don't recollect whether I tried to hire a barge for Hecksher & Co. that season.

Question. Is there any fixed established price per day for the use of barges, or does the value of such use depend upon the demand and rates of freight?

Answer. There is no fixed price; but it depends upon the demand and rates of freight. The value depends upon what a man can get for the use of his boat. Had no occasion that season to ascertain what I could hire a boat for. Don't know what is the charge usually estimated or allowed for the expenses of the crew. Crew is usually captain, man, and boy. Don't know what sum is usually allowed for them.

Re-direct.

My business led me among bargemen that season altogether.

J. L. F. ELKIN.

Sworn to before me this 30th day of March, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

Michael O'Neil, sworn on part of respondent: Was owner of part of a barge in 1856; her name was the Ann Maria Elkin; saw Owen Gorman; know about her capacity and size.

Question. Had you any knowledge of the market value of barges of the size of the Owen Gorman during the season of 1856?

Answer. Yes, sir.

Question. From your knowledge of the market value, what was a fair price per day for the Owen Gorman, or a vessel of her capacity during that season?

Answer. I should think about $5 per day for the boat alone.

Cross-examined.

Am now part owner of same barge. In 1856, was master of steamboat Rainbow; she was engaged in towing barges between New York and New Brunswick, for the Delaware and Raritan Canal Company; presume it is connected with the Camden and Amboy Railroad Company; have no certain knowledge of it; can't remember name of man that had charge of my barge that season; I think it was Alex. Wallace, but am not sure whether it was he or Thos. Rourke; did not take personal charge myself; run between New York and Richmond, and wherever she could get a freight; she was a coal boat; captain had charge of hiring her and collecting freights; I had no personal connection with hiring her out; I had no occasion that summer to hire boats, nor to ascertain what a boat could be hired for; there is no fixed price for the use of barges, it depends upon what a man can get for the use of his boat; so far as I know there is no general market value; think the Owen Gorman carried about 208 or 210 tons of coal from Richmond.

Re-direct.

Question. Do you know what you got for the earnings of your barge during the season of 1856?

Answer. I think I do.

Question. Was she busy during that season?

Answer. She was.

Question. How did her earnings compare with other boats of the same class?

Objected to and ruled out. Exception taken.

Question. Have you knowledge of what other barges earned during that season?

Answer. Have no other than what I heard other persons say.

Question. What did your boat average per day during the season?

Objected to. Objection overruled and exception taken.

Answer. Two dollars and ninety-four cents for the whole boat.

Question. How far were you consulted about the making the contracts of renting the boat?

Objected to.

Answer. If he was going to rent the boat I should certainly be consulted, but he was carrying freight in the usual way of business, he would go on and get what freight he could.

Question. Did your boat get the going freights of that season?

Answer. I believe she did.

Question. About what is the difference between custom-house tonnage and actual capacity?

Answer. Those which rate 100 to 110 custom-house will carry from 200 to 240.

Re-cross.

Have no knowledge of the earnings of the boat except from the returns the captain makes me, and all he returned to me was the nett earnings. To get the average sum I have named I divided the whole amount earnings by 8½ months.

MICHAEL O'NEILL.

Sworn to before me this 30th day of March, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

John Phillips, for respondent: Was a boatman in 1856; I owned a barge; was captain of her; have seen Owen Gorman.

Question. Do you anything about the market value of barges during the season of 1856, per day?

Answer. Yes, sir.

Question. From your knowledge of the market value, what was a fair price for the use of the Owen Gorman from April 15th to 1st September, per day?

Answer. In my judgment from $2 to $3 without hands.

Cross-examined.

The "Young Michael" is the name of my boat; did not run in any line; run her myself to different places; was running in 1856, all the season; am sure of it; running constantly; had freight something better than half the time; the time when I hadn't freight was between the time when I unloaded and reloaded; my boat 100 tons custom-house; she is going on eight years old; have not been employed by the Camden and Amboy R. R. Co., nor by the Raritan Canal Co.; freight varied in 1856; have no account of what they were; don't recollect what they were; my barge was not hired out that season by the day; I did not hire any by the day; do not know of any being hired by the day; there is no fixed price for the use of barges; depends on the quantity and rate of freight; there is no market value so far as I know; when I speak of $2 to $3 be-

ing a fair price I don't judge from my own business, but from what other people said who had boats rented out; I don't judge from my own knowledge but from what other people said who had boats rented out; some boats are better than others and bring better prices; have seen the Owen Gorman several times.

Re-direct.

I know of boats being rented by the month during the season of 1856.

Question. How much did they get?

Answer. They told me they got from $60 to $70 per month. I mean they got that clear.

Question. Do you know what prices boats were bringing that year either by day or month? If so, state.

Answer. Not by my own knowledge.

Question. How did your freights compare with the market freights that year?

Objected to.

Answer. I got the market freights.

JOHN PHILLIPS.

Sworn to before me this 30th day of March, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

April 12, 1859. Counsel for respective parties present.

Patrick McGee, sworn on part of respondents. Reside in New York. Am coal dealer. Have been agent for Chas. A. Hecksher for six years. If I wanted a boat for his use, I would hire it. While I was agent for him I was engaged more or less in hiring and letting boats. Have seen the Owen Gorman. I have reference to coal barges.

Question. Did you have anything to do with the hiring and letting of boats in 1856?

Answer. I suppose I did. Coal barges; nothing else.

Question. What was a fair market-price per day for a barge like the Owen Gorman in 1856?

Answer. That I can't give a decisive answer on.

Question. State what was the price during that season, from your knowledge from the hiring and letting of boats and otherwise.

Answer. Eight dollars a day, clear of all expenses.

Question. How long have you been engaged in the coal business?

Answer. Since December, 1857. My business before that was agent for Charles A. Hecksher, as I before stated. Before that I was engaged in wrecking and carrying coal.

Cross-examined.

Hecksher & Co. did not, as a general thing, let out boats; generally ran their own boats.

Question. Do you now recollect of having hired boats in the season of 1856?

Answer. Yes, sir.

Question. What boats, and from whom?

Answer. I can't answer that question.

Question. Do you remember the rate at which you hired any one boat; and if so, state the boat and the rate?

(Objected to.)

Answer. The boats that I had hired were in my own charge, and could make my own rates; that is, the boats came to me in the winter season, and when navigation opened; any of them that were loaded when the owners came here I paid them at the rate of $8 per day. This was not any matter of agreement between us; they were satisfied with the price. These agreements were not for any specified time.

Question. Is there any fixed market-price for the use of coal boats, or does the price depend upon the rate and quantity of freights?

Answer. It generally depends upon the rate and quantity of freights.

Question. Have you any memorandum or entry in your possession of what was paid for boats during the season of 1856?

(Objected to.)

Answer. I don't suppose I have. The boats which Hecksher & Co. used in their line they owned themselves. Did not frequently have occasion to hire boats. They only hired them when they hired them to their friends.

Question. Did they frequently have occasion to hire boats from other people?

Answer. They never hired them individually themselves.

Question. Do you now recollect what the rates of freight were in the season of 1856?

Answer. I do not know the rates. The freights vary during the season.

Question. Do you recollect whether freights were better in the beginning, middle, or the latter part of the season of 1856?

Answer. I don't recollect.

Question. About what do you estimate the tonnage of the Owen Gorman to be, both custom-house and actual?

Answer. She might be a 188 or 190 custom-house, and actual, over 200 tons.

Re-direct.

Question. You spoke something about the relative prices at which Hecksher & Co. hired out these boats being greater or less. Was it

the full market-price, or was it the least market-price at which they hired them out?

(Objected to.)

Answer. It was the full market-price.

Question. You have said that Hecksher & Co. never hired boats individually themselves. Did they hire more or less through you as their agent?

Answer. Yes.

Question. You said you had no memorandum of what was paid for boats in 1856. Do you not recollect without any memorandum what was the price?

(Objected to.)

Answer. I do. I know what I paid for boats.

Question. What was the highest price during that season that you paid for boats like the Owen Gorman?

Answer. Eight dollars.

Re-cross-examined.

Question. How many times and what boats are you willing to swear that you hired at all during the season of 1856?

Answer. I can't tell.

Question. How many times are you willing to swear that you paid as high as $8 per day during that season?

Answer. I can't tell how many times.

Question. Can you name and specify one single time?

Answer. I can't specify any particular one.

Question. Did you keep any entries or record of the prices paid or agreed to be paid for boats during the season of 1856?

(Objected to.)

Answer. Yes.

Question. Where?

Answer. In a book.

Question. Where is it?

Answer. I may find. I don't know where it is now.

Question. How long since you have seen it?

(Objected to.)

Answer. I cannot say. Have not examined it for the purpose of testifying here. Have testified here unaided by the memorandum book.

PATRICK McGEE.

Sworn to before me this 12th day of April, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

Adjourned to Friday, the 15th inst., at 12 M.

April 15, 1859. Present, counsel for respective parties.

Ezra B. Ely, sworn for defendant. Reside in Philadelphia. I own coal barges, and have since 1852. I know the Owen Gorman.

Question. State what was a fair price for the use per day for coal barges like the Owen Gorman in 1856, from April to July.?

Answer. I think about $70 a month for the boat without crew.

Question. State the facts by which you arrive at that conclusion?

(Objected to. Objection sustained and exception.)

Question. During 1856, what was a fair price for freight by such barges as the Owen Gorman, during 1856?

(Objected to. Objection sustained and exception.)

Question. What was the rate of freight during the season of 1856 by such barges as the Owen Gorman?

Answer. It varied during that time. I can give, if you wish me to, the rates at different times during that season, and the general average. From April 7th to Sept. 9th, 1856, the freights. April 7th, $1 05; April 12th, $1 00; May 6th, 95 cents; June 30th, $1 05; August 18th, $1 00; August 25th, $1 10; September 9th, $1 05, per ton, to each of which should added ten cents per ton drawback allowed by the Reading Railroad Company, and from which should be deducted the following items of expense: trimming, 3 cents per ton; steam-towing, 23 cents per ton; team-towing, 11¼ cents (nearly) per ton; canals' tolls, 30 cents; discharging, 10 cents; wharfage, 1¼ cents; ordinarily, one-third the price of weighing, 2 cents; amounting to 80½ cents per ton of coal, exclusive of boat and crew.

Question. Did you keep any memorandum during 1856 relative to your own boats, and if so what was it?

(Objected to, as it calls for the memorandum. Objection sustained and exception.)

Question. State whether or not you kept any memorandum of any of the facts to which you have testified during 1856.

Answer. I did.

Question. Is your testimony in conformity to said memorandum?

Answer. It is.

Question. Have you a distinct recollection independent of the memorandum?

Answer. I should not have without the memorandum a distinct recollection of all the facts.

Question. Have you refreshed your recollection by the memorandum-book?

Answer. I have.

Question. Have you now a distinct recollection of the principal facts in the memorandum-book to which you have testified?

Answer. I know that my memorandum is correct.

Question. Were the entries in the memorandum made at the time the circumstances happened and which they allege?

Answer. They were.

Question. Have you the memorandum with you?

Answer. I have.

Question. Produce it.

(Book produced, and counsel for defendant offers to read in evidence such portions of the book as relate to the facts, to which the witness has testified, and of which the witness has not a distinct recollection independent of the book. Counsel for plaintiff objects that the offer is too broad and indefinite, the particular portions offered are not specified. Plaintiff's counsel desires defendants to specify the portions he offers to read.)

(Offer overruled and exception taken.)

(Plaintiff's counsel offers to read in evidence such entries in the memorandum-book, marked 1, 2, 3, and 4.)

The same are as follows: June 13th, 196 tons at $1 per ton, $196. 2d. June 27th, To freight on 198 tons at $1 05. July 11th, 196¼ tons at $1 05 per ton. Aug. 194 tons at $1 10, and the same are read.

Question. State to whom during the season of 1856 you hired out coal barges.

Answer. No one.

Question. Have you hired out coal barges to Patrick F. Brady?

Answer. I hired a coal barge to him.

Question. When, and for what price?

(Question waived.)

Question. Do or do not the price of boats like the Owen Gorman vary essentially from one year to another?

Answer. Generally not much.

Question. Was there or not any essential difference in the price of boats per day, like the Owen Gorman, in 1856 and 1857?

(Objected to. Objection sustained and exception.)

Question. When and for what price did you hire a boat to Brady?

(Objected to. Sustained and exception.)

Question. Did the boats which you owned in 1856 run between New York and Philadelphia?

Answer. Two of them did.

EZRA B. ELY.

Subscribed and sworn to before me, this 14th day of April, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

Adjourned to the 18th inst. at 12 M.

April 18. Attended, and adjourned to the 20th at 11.

May 18th. Counsel for respective parties present.

Joel G. Sweet called and sworn on part of respondents.

Question. What is your age, residence, and business?

Answer. Age 36 years. Residence, New Brunswick, New Jersey.

Principal business is collector for the Delaware and Raritan Canal Company; collector of tolls of boats passing through the canal. I am an owner of barges running through that canal, and have charge of the company's business generally at that place; am collector of steam towing also.

Question. What was your business during the season of 1856?

Answer. The same as I have stated.

Question. Do you know the Owen Gorman?

Answer. Yes, sir.

Question. How often have you seen her?

Answer. I have seen her a great many times.

Question. Are you acquainted with the market value of freights during the season of 1856?

Answer. Yes, sir.

Question. From your knowledge of the market price, what was a fair and reasonable price for the use of the Owen Gorman per day, from April to September, 1855, without a crew?

Answer. Not over $4 per day.

Question. How many trips could the Owen Gorman have made from Philadelphia to New York, from the 15th of April to the end of July, 1856, supposing she had freights all the time?

(Objected to. Overruled and exception.)

Answer. Seven trips.

Question. What could she have earned during that period, supposing she had the highest market price freights?

(Objected to. Overruled and exceptions.)

Answer. From what I know not over $300.

Question. Do you speak of the value of freights from your own knowledge or from hearsay, in your answer to the last question?

Answer. From my own knowledge.

Question. Did you own any barges during the year 1856, and if so, how many?

Answer. I did. Four barges.

Question. How many years have you been in this business?

Answer. Eight years in the barge business and ten in the other.

Cross-examined.

Question. Did you run your own barges, or did you have captains employed who took charge of them?

Answer. I had captains employed. They procured freights, collected the freights, and made returns to me. Of the four barges I was the part owner. My business required me to remain at New Brunswick; did not make any contracts for freights myself during 1856; did not hire any barges nor let any during that season. I know what the rates of freight were in 1856; I know the rates of freight from the bills of lading; no other way positively. Recollect

now what freight was in 1856; I have a memorandum with me of it. The memorandum is made of from my old bills of lading of my own boats in 1856. The Owen would carry about 207½ tons of coal. I estimate fifteen days for a trip from Philadelphia to New York and back again. The average rate of freight on my memorandum is $1 12½ per ton from April the 15th to the last of July, inclusive of drawback; I am sure of that. I estimate expenses of crew per day at $2 50.

Question. When you estimate the earnings the Owen Gorman could have made during the period referred to, do you make such estimate with reference to the earnings of your own boat?

Answer. Not entirely.

Question. On what basis do you make the estimate?

Answer. From the rate of freights and the actual expenses. I know Ezra B. Ely; he is agent for the steam towboats belonging to the Delaware and Raritan Canal, and Camden and Amboy Railroad and Transportation Company, at Philadelphia.

Re-direct.

Question. Who had charge of the four barges which you were interested in?

Objected to, as it is already answered in the cross-examination.

Answer. I did entirely.

Question. Did you pay all the expenses of those barges?

Answer. I did.

Re-cross.

Question. Did you take charge of those four barges, or did your captains?

Answer. The captains took the immediate running charge, and I had charge of the captains, and everything connected with their operations. The captains paid for the trimming, the unloading, wharfage at New York; I paid the tolls, steam and team towing, and the captains' and crews' wages.

Re-direct.

Question. In the business in which the Owen Gorman was engaged, was there any usage as to manner of hiring barges?

Answer. Yes, generally.

Question. What was that usage?

Objected to.

Answer. By freighting, as stated.

J. G. SWEET.

Sworn to before me this 18th day of May, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

Adjourned to the 24th day of May, 1859, at 10 A.M.

May 24th.

Present, counsel for respective parties.

Marchus S. Bulkley, sworn on part of respondents:

Am the agent of the Reading Railroad Company; I have charge of their coal-shipping works at Richmond; I have been with the company twenty years next December; only fifteen years in that department. We ship our coal on schooners, barges, and all kinds of vessels. I was in the same business in 1856. In that I was interested in eleven barges. I have seen the Owen Gorman, I think; she is about 210 or 214 tons. I know the market value for the use of barges in the year 1856.

Question. What was the market value for the use of a barge of the size of the Owen Gorman in 1856?

Answer. I rented mine that fall for $8 a day with men. (This answer objected to as incompetent.) Two dollars and a half a day allowed for men. I don't know how the price of barges in the summer and fall compared, for I don't know of any being rented in the summer. By rented I mean hired by the day. Freights were much better in the fall. My barges were carrying coal during the summer.

Question. What could a barge the size of the Owen Gorman earn during the summer of 1856, carrying coal between New York and Philadelphia, as freights then were?

Objected to, overruled, and exception.

Answer. She could not have earned over $5 a day, including the men; $2 50 a day without the men.

Question. What opportunities had you for getting freight?

Objected to, overruled, and exception.

Answer. I had fully as good opportunities as any one. I was running barges, during the season of 1856, the size of the Owen Gorman; they were carrying coal.

Cross-examined.

I had captains to run my barges. I acted as agent of the Reading Railroad Company all the time. My business required me at Richmond. I was interested, as part owner, in the eleven barges. I attended personally to getting freights for my barges in nine cases out of ten. I made contracts for the single trip, and not for the season. None of my barges were chartered during the summer; do not know of any being chartered during the summer. My barges, when they went back from New York, generally went empty; when they went to Albany they sometimes came back with freight. In my case the value of the use of a barge always depended upon what you could get. In estimating what the Owen Gorman could earn, I have made the estimate with reference to what my own barges did net me. The barges I have spoken of as being rented by me, during

the fall of 1856, were running on the North river. The party who hired them had the privilege of keeping them till the close of navigation, but he was not obliged to do so. I hired three in that way. It was not after navigation on the canal had closed. In my estimate of the net earnings of the barges spoken of I take the average for the summer months, June, July, and August.

Re-direct.

Couldn't say whether barges earned more in April than July. As a general thing the spring and fall are the best. I don't recollect a case of a barge being hired out to carry coal at so much per day. I know of cases where charges have been made for demurrage where barges have been detained. The usual way was to carry the coal at so much per ton. The price was regulated by the rate of freight.

Re-cross.

Do not know of any case of a barge being hired out for a fixed period of time at a fixed sum, or at a fixed rate, that is to carry coal. My barges are all in the coal trade, and my business was in the carrying of coals.

M. S. BULKLEY.

Sworn to before me, this 24th day of May, 1859.

KENNETH G. WHITE.

William Airgood, sworn on part of respondents.

My business is carrying coal on a barge on the Schuylkill, from Pottsville to Philadelphia. My business in 1856 was carrying coal clear on to New York. I attended to the running of my barge in 1856. I attended to the receiving freight and making bargains. Been upwards of 25 years engaged in it. Was captain of my own boat.

Question. In the spring of 1856, was there any fixed price for the use of barges engaged in carrying coal?

Answer. There was a fixed price.

Question. What was that price?

Objected to.

All further testimony as to the value excluded by the commissioner, as the respondents have already called the same number of witnesses as the appellants, and they must be limited to that.

Exception taken to the ruling by counsel for respondents.

Counsel for respondents offers to show, by the witness, 1st. That this witness, who was in 1856 a captain of a barge in coal business, receiving freights, knew from his own knowledge that a barge of the size of the Owen Gorman could not possibly earn over $5 a day, including man and boy.

2d. That there were several meetings of barge-owners in the spring of 1856, at which a fixed price was agreed upon, and that Brady assented to that price, and that by that agreement the Owen Gorman could not earn over $5 a day with a crew.

3d. Offered to show what the fair market value of barges of size of Owen Gorman, engaged in the trade the Owen Gorman was, was from April 15th to August 1st, 1856.

4th. That the Owen Gorman was run by her captain and not by Brady, and that the freights were received and contracts made by the captain.

5th. That freights, from the 15th April to August 1st, 1856, were not so high as they were in fall of 1856.

6th. That freights, in 1856, were less than in immediately previous and subsequent years.

The admission of the testimony embraced in said offers objected to by counsel for appellants, on the grounds that it is irrelevant, and that it comes within the ruling of the commissioner excluding further testimony as to value.

Objection sustained, and exception taken.

Washington Murray, sworn on part of respondents.

I am the attorney in fact of Cambridge Livingston, and the person upon whom papers in this action are served for Mr. Livingston, Mr. Livingston being in Europe, and having been since August, 1858. On the 4th of November, 1858, I received a notice, which I now present to the commissioner, and which is marked Exhibit A., K. G. W., U. S. com.

Two or three days afterwards I received this paper, "Exhibit B.," K. G. W., com.

Question. State whether or not any bill of damages has ever been served on respondents by the libellant?

Answer. There has been a statement served on me by the proctor for the libellant.

Question. Look at the paper now shown you, and state whether that is the bill that was served.

Answer. It is the statement served on me.

Question. For what purpose was this bill served?

(Question waived.)

Question. State the time and circumstances under which the paper was served.

Answer. Immediately after the cause was decided in the court above, the proctor for the libellant, Mr. Charles D. Burrill, called upon me at my office, and said that he supposed this cause would now be settled, and he had brought around a statement of the actual loss. I asked him to give me a copy of it to submit to the company, and this is the copy he gave me.

Question. Was there any further claim made at that time; and if so, what was it?

Answer. There was not.

Cross-examined.

Counsel for respondents now offers the statement referred to in evidence, and it is marked "Exhibit C.," K. G. W., U. S. com.

Am a lawyer, and admitted to the Supreme Court of the United States. Am not admitted to the Circuit Court of the United States. I have conducted some of this reference; Judge Beebe some, and Mr. Harris some. I have had principal charge of it.

Question. Was paper "Exhibit C." served on you as a paper in the cause?

Answer. I can only state the manner of its service, and the facts connected with it.

Question. Had you asked or requested the proctor for respondent to furnish you a statement of the amount of the libellant's claim?

Answer. I have no recollection of so doing.

Question. Were there any vouchers shown, or left with you by the proctor for libellants?

Answer. There were some shown to me in connection with the statement.

Question. Was anything said between you and the proctor for libellants in respect to the settlement of this controversy, and a waiver or abandonment of the right to appeal from the decree of the Circuit Court?

(Objected to, overruled, and exception.)

Answer. All that I recollect being said about it was, that Mr. Burrill thought that now that the decree of the District Court was reversed at the circuit, that the company would pay the claim. I told him I did not know what the company would do. He showed me this statement, and I told him if he would give me a copy of it, I would submit it to the company. At that time, I had never conversed with any officer of the company with regard to this claim.

Question. Did he not state to you that Brady was a poor man, and wanted his money, and that if the company would settle then, and not take an appeal, he would be willing take the amount specified in that statement, which included his actual expenditure for repairs, shown by the vouchers then exhibited, and a small sum for the loss of the use of the boat, or anything to that effect?

(Objected to.)

Answer. I think he made some such statement, except with reference to the use of the barge; as to that, I don't recollect his making any statement that the amount was anything than the value of the barge.

Question. Do you recollect his saying anything to you at all as to the value of the barge?

Answer. I recollect his saying something about the value of the barge.

Question. Did you give him an answer to his proposal, and if so, how long after that statement?

Answer. I gave him an answer, but I cannot say how long.

Question. What was that answer?

Answer. That we would not pay the claim, but should appeal; and offered to let him take his report for $2050, to avoid the expense of a reference.

Question. Was there not a memorandum at the foot of that paper at the time it was handed to you?

Answer. There was; I tore it off, and I don't know where it is. I don't recollect how many lines it was.

Question. Did that memorandum say anything about having furnished you the vouchers for the items in the statement?

Answer. It did.

Question. Are you positive that when that statement was handed to you the words "actual loss" were used?

Answer. I am positive that the word "actual" was used, but whether connected with the word "loss" I can't state. The statement I sent on to the company.

Re-direct.

Question. State the contents of the memorandum taken off the bottom of the statement?

Answer. To the best of my recollection, it stated substantially that the vouchers for the above statement had been shown to me by the subscriber to it, who was Mr. Chas. D. Burrill. I thought it would have more effect with the company to have that statement come from me, and so I tore it off, and stated the substance of it in my letter to them. This is all I recollect of its containing.

Re-cross.

The vouchers shown me were for the amounts expended. There was no voucher for the detention of the barge.

WASHINGTON MURRAY.

Sworn to before me, this 24th day of May, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

Testimony closed.

Adjourned to the 26th, at 11 A.M.

May 26th, case closed.

Indorsed: Filed September 23, 1859.

Depositions of witnesses produced, sworn, and examined, the sixteenth day of November, in the year one thousand eight hundred and fifty-eight, at the office of Robert P. Kane, Esq., in the city of Philadelphia and State of Pennsylvania, under and by virtue of a Commission issued out of the Circuit Court of the United States for the Southern District of New York, in a certain cause therein depending and at issue between Patrick F. Brady, appellant, and the Steamboat New Philadelphia, and the Camden and Amboy Railroad Company, respondents.

George A. Twibill, of the city of Philadelphia, aged thirty-four years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellant and appellant, doth depose and say as follows.

1. To the first interrogatory, he saith:

I am thirty-four years of age, or thereabouts. My name is George A. Twibill. I reside in Locust street, No. 2040, in the city of Philadelphia, and I follow the occupation of a boat and vessel owner, and did so in the summer of 1856.

To the second interrogatory, he saith:

The cargo of the barge Owen Gorman, on the voyage inquired of, consisted of coal. I only know this from the statements of others made to me. I do not know how many tons she had on board.

GEORGE A. TWIBILL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the 16th day of November, 1858, before

ROBERT P. KANE,
Commissioner.

Patrick Campbell, of the city of Philadelphia, aged thirty years, or thereabouts, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellant and appellant, doth depose and says as follows.

1. To the first interrogatory, he saith:

My name is Patrick Campbell. I am thirty years of age, or thereabouts. I reside in Pine street, No. 2310, in the city of Philadelphia. I am at present engaged in no particular business. In the summer of 1856, I was the master of the barge Owen Gorman.

2. To the second interrogatory, he saith:

The cargo of the barge Owen Gorman, on the voyage inquired of, consisted of coal. When she left Philadelphia on that trip, she had on board 207½ tons.

3. To the third interrogatory, he saith:

The barge was directed to deliver her cargo of coal at the dock at the foot of Adams street, Brooklyn. The directions to deliver the coal there were given before the barge started on her trip. The directions contained in the bill of lading were, to deliver the coal to

Clark & Van Winkle, at the foot of Adams street. The bill of lading was given me about the 12th of April, 1856.

No cargo was taken out of the barge until after she sunk. After the barge had been raised and carried to Red Hook point, the coal was taken out of her. The coal was taken out at Red Hook point, where she was stranded. The coal was washed as it was taken out, and then placed on the barge Washington, and taken to Clark & Van Winkle, at the Atlantic docks, Brooklyn. The coal was washed to free it from mud and dirt. The quantity delivered to Clark & Van Winkle was less, by some seven and a half tons, than that taken on board at Philadelphia. The deficiency was, I suppose, occasioned by its being washed out of the hatches before she was raised. The coal delivered was in a damaged condition, occasioned by mud and dirt, and exposure to the water. There was a delay in its delivery, occasioned by the sinking of the barge. The delivery was prevented until the July following the sinking.

4. Fourth. To the fourth interrogatory, he saith:

The barge was raised by Babcock, and she was repaired at Red Hook, by Mr. Burtis. I was employed in watching the barge, and in superintending the raising and repairing of her. My services in this capacity of watchman and superintendent, extended from the 17th of April, 1856, the day the barge was sunk, until the 30th of July, when her repairs were completed. The services rendered by me were worth what I charged, $35, and found. My board was $12 per month, and adding my travelling expenses, I would be entitled to $175; and this for my services and time, exclusive of any claim for clothing lost on the barge. I have not been paid for my services. I could have made more as the master of the barge, than I charged for my services. My services were necessary and proper, because I was there protecting and watching over the interests of all parties, being employed with the knowledge and approval of the agent of the company, as well as by Mr. Brady. I was present every day during the raising and repairing of the barge; and after she was above water, I saw her every day until she was repaired. Mr. Babcock had the barge towed from where she sank to Red Hook point. The barge was raised by Mr. Babcock, and the services rendered by him were necessary and proper. The barge was repaired by Mr. Divine Burtis. The barge was both raised and repaired in a business-like way, and the character of the work done was fair. What was done was necessary, and was done expeditiously. I do not, however, think that she was placed in as good condition as before the collision. The work, both of raising and repairing the barge, was rendered necessary, by reason of her sinking and the injuries which she had received from the collision. There were no repairs put upon her which were not rendered necessary by the injury done her by the collision. I have examined the bill annexed to the commission, marked A.; all the charges made therein by Mr. Burtis, for work, services, and materials are correct, and the whole of the same were rendered necessary, by

the injuries which the barge sustained by the collision. The barge was in good order and fit for use on the 30th of July, 1856. I would remark that there seems to be an error in the dates in the bill annexed. The dates should be of July, 1856, and not of February of that year.

5. To the fifth interrogatory, he saith:

In the months of April, May, June, and July, 1856, there was a demand for barges like the Owen Gorman; the demand was good. It has not been so good since that time. In those months the freights were good, as was also the condition of the market as to the prices for hiring boats of the class of the Gorman. According to the condition of the market, at that time, from $120 to $140 per month would have been a fair price and charge for the use of the Owen Gorman. There was plenty of business at the time, and some vessels, such as the Gorman, got as much as $150 or $160 per month. The Owen Gorman could have obtained as much as $140 per month, for her use at that time. Her owners could have earned that much for her use and hire at that time. When coal-barges are hired and chartered, they are run by the party taking them, and at their expense. A fair and reasonable price per month for the loss of the use of the barge, according to the current rates and prices for barges and freights, at the period named, would have been $140.

6. To the sixth interrogatory, he saith:

I know the usage inquired of. It is the usage among coal-barges carrying coal from Philadelphia to New York, and dealers with them, when no particular street or wharf for the delivery of the coal is specified in the bill of lading, to place the barge at a wharf at the port of delivery to be selected by the master, and then to send word to the consignees of the coal, of the arrival of the barge, who may remove her if they see fit to another wharf at their own expense. Such usage existed in the month of April, 1856.

7. To the seventh interrogatory, he saith:

The following clothing, provisions, and furniture were on board of the Owen Gorman at the time of the collision, and were rendered worthless by her being sunk:

One clock, dishes, pans, pots, two beds, one stove, one overcoat, one dress coat, one other coat, one pair of pantaloons, under-clothing, bed-covers and blankets, one towing hawser, signal lamp, cabin lamp, looking-glass, the entire lot were worth about sixty dollars.

8. To the eighth interrogatory, he saith:

I do not know of any other matter or thing material, or which may tend to the benefit and advantage of the libellant.

PATRICK CAMPBELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the sixteenth day of November, A.D. 1858, before

ROBERT P. KANE,
Commissioner.

The President of the United States of America, to Robert P. Kane, Esq., counsellor at law, of Philadelphia, in the State of Pennsylvania, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents, do give you full power and authority diligently to examine upon their corporal oaths or affirmations, before you to be taken, and upon the interrogatories hereunto annexed, Patrick Campbell, John Campbell, George A. Twibell, A. H. Stillwell, George French, William French, and E. F. Hyatt, as witnesses on the part of the libellant and appellant, in a certain cause now pending undetermined in the Circuit Court of the United States of America for the Southern District of New York, second circuit, wherein Patrick F. Brady is appellant, and the steamboat New Philadelphia, and the Camden and Amboy Railroad Company, are respondents.

And we do further empower you to examine on the same behalf, and in like manner, any other person or persons who may be produced as witness before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to Kenneth G. White, clerk of the Circuit Court of the United States for the Southern District of New York, at the city of New York, as soon as may be convenient after the execution of this commission; and that you return the same when executed, as above directed, with the title of the cause indorsed on the envelope of the commission.

Witness, the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of [L. S.] New York, this fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-eight, and of our independence the seventy-eighth.

KENNETH G. WHITE,
Clerk.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY, appellant,
agst.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c.
THE CAMDEN AND AMBOY RAILROAD CO.,
claimants, respondents.

Interrogatories to be administered to Patrick Campbell, John Campbell, George A. Twibell, A. H. Stillwell, George French, William French, and E. T. Hyatt, witnesses on the part of the libellant and appellant.

First. To all the Witnesses.

What is your age, name, residence, and occupation? And what was your occupation in the summer of 1856.

Second. What did the cargo of the barge Owen Gorman consist of on her voyage from Philadelphia to New York in April, 1856, on which she was injured? If you say that it consisted of coal, state how many tons of coal the said barge had on board when she left Philadelphia.

Third. To Patrick Campbell, and John Campbell. Was the barge directed to deliver the coal at any particular dock in Brooklyn? and if so, at what dock was the said coal so directed to be delivered? Was said directions given before the barge reached New York, and if so, state when and where such directions were given? Was any of the cargo of the barge taken out of her between the time she left Philadelphia and the time she was sunk? After the barge sunk what was done with the cargo? Was it taken out of the barge, and if so, what was done with it? Where was the barge when the coal was taken out of her? Was the coal taken out of her before or after the barge was removed to Red Hook? Was any part of the coal washed after it was taken out; and if so, what was the necessity, if any, of washing it? Was the quantity of coal which was finally delivered to Clark and Van Winkle less than that which was taken on board at Philadelphia; and if so, by how much less, and what was the occasion of such deficiency? Was the coal which was delivered to the said Clark and Van Winkle damaged or injured; and if so, by what was such damage or injury occasioned? Was there any delay in delivering the coal to Clark and Van Winkle; and if so, what was the occasion of the said delay.

Fourth. Was the said barge raised, and by whom? By whom, and where was she repaired. Were you or either, and if so, which of you employed in watching the said barge, and in superintending the raising and repairing of her (and if so, state what services you rendered in watching her, and what you rendered in superintending her raising and repairing)? State what was the value of such services so rendered by you, and whether you were paid therefor, and if so, what sum you so received, and whether such services were necessary and proper, and if so, how? Did you see the barge while she was in process of being raised and repaired, and if so, how frequently did you so see her? State, if you know, by whom the barge was towed from where she sank to Red Hook, and by whom she was raised?

Were the services which were rendered by Babcock necessary and proper services? Do you know by whom the barge was repaired? and if so state. State how the raising and repairing the barge was done in respect to the character of the work, and the time within which it was done; and state whether the work and services done in raising and repairing her were, or not, necessary and proper. State whether any, and if so what portion of the work done in raising and repairing the said vessel was rendered necessary, by reason of the injuries received from the collision in the libel mentioned?

State whether there was any work done to, or repairs put upon the

barge besides what was rendered necessary by reason of such injuries; and if there was, state what such extra work and repairs were?

Look at the bill hereto annexed marked A., and state whether any, and if so what portion of the work, services, and materials, therein charged, were rendered and furnished by Mr. Burtis; and whether any, and if so what portion thereof was rendered necessary by the injuries sustained by the collision? State when the said barge was again in good order and fit for use after the collision.

Fifth. State whether there was any demand for barges like the Owen Gorman in the months of April, May, June, and July, 1856; and if so, state whether such demand was great, and if not, how otherwise? State what was the condition of the market as to freights in those months? What was the condition of the market as to the prices for the hiring of boats of that class at that time? What was a fair price and charge, according to the condition of the market at that time, for the use of the Owen Gorman per month, at the period above named? Name the sum, if any, which you can say could have been obtained for the use and hiring of her per month, at the said period? What amount could have been earned by her owner, for the use and hire of said barge per month, at that time? When coal barges are hired and chartered, by whom is the barge run, and at whose expense? What is a fair and reasonable price to be charged per month for the loss of the use of the barge, according to the current rates and prices for barges and freights, at the period above named?

Sixth. Do you know, and if so state whether there is any custom or usage among coal barges carrying coal from Philadelphia to New York, and dealers with them, in respect to the place of delivery of cargo, where no particular street or wharf is specified in the bill of lading? and if so, what such usage is, and whether the same existed in the month of April, 1856?

Seventh. State whether there was on board of the said barge at the time of the collision, and if so what amount, of clothing, provisions, and furniture, and if so, state of what the same consisted, and their value; and whether the same were injured or destroyed, and if so, to what extent and amount.

Eighth. Do you know of any other matter or thing material, or which may tend to the benefit and advantage of the libellant? if so, state the same fully as though especially interrogated thereto.

CHARLES D. BURRILL,
For Libellant and Appellant.

Settled November 15th, 1858.

The within interrogatories allowed, no opposition being offered thereto on the part of the claimants.

SAMUEL R. BETTS.

New York, November 15th, 1858.

Canal Boat "Owen Gorman" and owners,

To Divine Burtis, Dr.

1856.		
Feb'y 21.	Hauling out on ways,	$30 00
"	440 feet of oak, at 4c.,	17 60
"	1266 " " plank, at 5c.,	63 30
"	317½ lbs. spikes, at 10c.,	31 75
"	132 " oakum, at 10c.,	13 20
"	Plugs 3½ one plank, at 3½,	13 75
"	19 lbs. cut nails, at 6c.,	1 14
"	Drivings on ways, 2 days ex., $5,	10 00
"	1½ barrels pitch, 24c. 2 mops,	5 50
"	310 feet Georgia pine, at 4c.,	12 40
"	6 dressed boards, at 30c.,	1 80
"	16 feet white pine, at 5c.,	1 80
"	Hinges and screws, at 5c.,	1 62
"	½ lb. white nails, at 6c.,	1 46
"	15 feet deck plank, at 5c.,	1 75
"	90¼ days' work, at 21½,	236 90
30.	21¼ " " at 13½,	34 32
"	10 lbs. start funches, at 1½,	1 25
"	38 " bolts, at 10c.,	3 80
"	4 rings, at 34c., ½ pint,	3 46
"	42 lbs. screw bolts, at 10c.,	4 20
"	pair rimming irons, at 8½,	1 00
		$471 60

City and County of New York, Southern District of New York, *ss.*

David F. Beck, being duly sworn, says, that on the 6th day of November, 1858, at the city of New York, he served the within interrogatories, with notice of settlement for the 15th November, 1858, upon the proctor for the claimants therein named, by delivering to and leaving a copy thereof with some person having charge of the office of said proctor, he being then absent therefrom.

DAVID F. BECK.

Sworn before me the 15th November, 1858.

KENNETH G. WHITE,
United States Commissioner.

Indorsed: Circuit Court. Patrick F. Brady *ag't* The Steamboat New Philadelphia. Interrogatories. Burrill, Dawson & Burrill, attorneys.

Instructions to Commissioners.

Annexed to the commission is an extract from the statutes of the

State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample

Instructions:

I. All the commissioners named in the commission should have notice of the time and place of executing it; and if any of them do not act, let the fact that they were notified, or could not be notified, and the reasons for their not acting, be stated.

II. The commission must be executed by the *commissioner* named therein.

III. The acting *commissioner* will examine the witnesses separately, after publicly administering to them the following oath or affirmation:

"*You do swear*, that the answers which shall be given by you to the interrogatories proposed to you, shall be the truth, the whole truth, and nothing but the truth. *So help you God.*"

The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "*You do swear in the presence of the ever living God,*" and while so swearing, he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted te make his affirmation in the following form: "*You do solemnly, sincerely, and truly declare and affirm,*" omitting the words, "So help you God."

IV. The general style or title of the depositions must be drawn up in the following manner:

"Deposition of *witnesses*, produced, *sworn* (or *affirmed*) and examined, the day of in the year one thousand eight hundred and at under and by virtue of a commission issued out of the in a certain cause therein depending and at issue between *defendant* as follows:

A. B. of (*insert his place of residence and occupation*) aged years and upwards, being duly and publicly *sworn* (or *affirmed*) pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows: First—*To the first interrogatory he saith, &c.* [Insert the witness's answer.] Second—*To the second interrogatory he saith, &c.*, and so on throughout.

If he cannot answer, let him say that *he knoweth not.*

V. If there be any cross-interrogatories, the witness will go on thus:

First—*To the first cross-interrogatory he saith, &c.*, and so on throughout.

VI. When the witness has finished his deposition, let him subscribe it, and the acting commissioner will certify as follows:

Examination taken, reduced to writing, and by the witness subscribed and sworn to this day of 18 before

Commissioner.

VII. If any papers or exhibits are produced and proved, they must be annexed to the depositions in which they are referred to, and be subscribed by the witness, and be indorsed by the acting commissioners, in this manner:

"At the execution of a commission for the examination of witnesses, between *defendant* this paper writing was produced and shown to (*insert the witness's name*) and by him deposed unto at the time of his examination, before

Commissioner."

VIII. The acting commissioners will sign their names to each half sheet of the depositions and exhibits.

IX. If an interpreter is employed, one of the commissioners will administer to him the following oath, and certify thereto.

"You do solemnly swear, that you will truly and faithfully interpret the oath and interrogatories to be administered to a witness now to be examined, out of the English language into the language, and that you will truly and faithfully interpret the answers of the said thereto, out of the into the English language."

Let the depositions be subscribed by the interpreter as well as by witness, and certified by the acting commissioners, as follows:

Examination taken, reduced to writing, subscribed by the witness and by the sworn interpreter, and sworn to by the witness, this day of 18 before

Commissioner.

X. The *commissioner* will make return on the back of the commission by indorsement, thus: "The execution of this commission appears in certain schedules hereunto annexed."

Commissioner.

XI. The depositions and exhibits (if any) must be annexed to the commission, and then the commission, the directions, the interrogatories, cross-interrogatories, depositions and exhibits, must be folded into a packet and bound with tape. The acting commissioners are to set their seals at the several meetings or crossings of the tape, indorse their names on the outside, and direct it thus:

To Esquire, clerk of the at

XII. When the commission is thus executed, made up and directed, it must be returned in the manner specified in the direction of the commission, if there be any.

XIII. If there be no direction on the commission specifying the manner in which it is to be returned, then it must either be delivered to the court *by one of the acting commissioners personally*, or else be forwarded by some person coming to this place, and who must be liable, on his arrival, to make oath, before one of the judges or the clerk of the court:

"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

XIV. In case of returning the commission by mail, it is to be deposited by one of the acting commissioners in the nearest post-office, he making the following indorsement thereon:

"Deposited in the post-office, at this day of 18 , by me,

Commissioner."

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter bag of such vessel, he making upon the commission the following indorsement:

"Deposited in the letter bag of the now lying at and bound for the port of New York, this day of 18 , by me,

Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon who will direct him as to its delivery.

Indorsed: United States Circuit Court, Southern District, New York. Patrick F. Brady *against* Steamboat New Philadelphia and others. Commission. Burrill, Dawson and Burrill, libellant and appellant's attorneys. Opened by order of court, and filed Nov. 17, 1858.

The execution of this commission appears in certain schedules hereunto annexed.

ROBERT P. KANE,
Commissioner.

The President of the United States of America, to Robert P. Kane, Esq., of Philadelphia, in the State of Pennsylvania, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents, do give you full power and authority, diligently to examine upon their corporal oath, or affirmation, before you to be taken, and upon the interrogatories hereunto annexed,

Patrick Campbell, John Campbell, George A. Twibell, A. H. Stilwell, George French, William French, and E. T. Hyatt, as witnesses on the part of the libellant and appellant in a certain cause now pending undetermined in the Circuit Court of the United States of America, for the Southern District of New York, second circuit, wherein Patrick F. Brady is appellant and the steamboat New Philadelphia, the Camden and Amboy Railroad Company, respondents.

And we do further empower you, to examine on the same behalf, and in like manner, any other person or persons, who may be produced as witnesses before you; and we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to Kenneth G. White, Esq., clerk of the Circuit Court of the United States for the Southern District of New York, at the city of New York, as soon as may be convenient after the execution of this commission; and that you return the same, when executed as above directed, with the title of the cause indorsed on the envelope of the commission.

Witness, the Honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of New York, this eleventh day of January, in the year of our Lord, one thousand eight hundred and , and of our independence the seventy-eighth.

KENNETH G. WHITE,
Clerk of the Circuit Court of the United States for the Southern District of New York.

Instructions to Commissioners.

Annexed to the commission is an extract from the statutes of the State of New York, relative to the taking of testimony out of the State, which extract is directed by law to be annexed to the commission. But as it does not comprise everything necessary to be attended to by the commissioners, they are requested to observe the following more ample

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The oath shall be administered (except in cases hereinafter mentioned) by the witness laying his hand upon, and kissing the Gospels.

But if the witness shall desire it, he shall be permitted to swear in the following form: "*You do swear in the presence of the ever living God*," and while so swearing, he may or may not hold up his hand, in his discretion.

Or if the witness shall declare that he has conscientious scruples against taking an oath, or swearing in any form, he shall be permitted to make his affirmation in the following form: "*You do solemnly, sincerely, and truly declare and affirm*," omitting the words, "So help you God."

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"Deposition of *witnesses*, produced, *sworn* (or *affirmed*) and examined, the day of in the year one thousand eight hundred and at under and by virtue of a commission issued out of the in a certain cause therein depending and at issue between *defendant* as follows:

A. B. of (*insert his place of residence and occupation*) aged years and upwards, being duly and publicly *sworn* (or *affirmed*) pursuant to the directions hereto annexed, and examined on the part of the doth depose and say as follows. First—*To the first interrogatory, he saith, &c.* [Insert the witness's answer.] Second—*To the second interrogatory, he saith, &c.*, and so on throughout.

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V. If there be any cross-interrogatories, the witness will go on thus:

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Commissioner.

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To Esquire, clerk of the at

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"That he received the same from the hands of A. B., one of the commissioners, and that it had not been opened or altered since he so received it."

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"Deposited in the post-office at this day of 18 , by me,

Commissioner."

In case of returning the commission by a vessel, it is to be deposited by one of the acting commissioners in the letter-bag of such vessel, he making upon the commission the following indorsement:

"Deposited in the letter-bag of the now lying at and bound for the port of New York, this day of 18 , by me,

Commissioner."

The commissioners are requested to be very careful to observe the foregoing instructions, as the smallest variance may vitiate the execution of the commission.

If the commission be returned by an agent, let him be instructed to call, on his arrival at this place, upon who will direct him as to its delivery.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY, appellant,
v.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c., THE CAMDEN AND AMBOY RAILROAD COMPANY, respondents.

Interrogatories to be administered to Patrick Campbell, John Campbell, George A. Twibell, A. H. Stilwell, George French, William French, and E. T. Hyatt, witnesses on the part of the libellant and appellant.

First. To all the witnesses.

What is your age, name, residence, and occupation, and what is your occupation in the summer of 1856?

Second. To Patrick Campbell and John Campbell.

What did the cargo of the barge Owen Gorman consist of, on her

voyage from Philadelphia to New York, in April, 1856, on which she was engaged? If you say that it consisted of coal, state how many tons of coal the said barge had on board when she left Philadelphia.

To Patrick Campbell and John Campbell.

Third. Was the barge directed to deliver the coal at any particular dock in Brooklyn, and if so, at what dock was the said coal so directed to be delivered? Were said directions given before the barge reached New York and if so, state when and where such directions were given?

Was any of the cargo of the barge taken out of her between the time she left Philadelphia and the time she was sunk? After the barge sank what was done with the cargo? Was it taken out of the barge; and if so, what was done with it? Where was the barge when the coal was taken out of her? Was the coal taken out of her before or after the barge was removed to Red Hook? Was any part of the coal washed after it was taken out and if so, what was the necessity, if any, of washing it? Was the quantity of coal which was finally delivered to Clark & Van Winkle less than that which was taken on board at Philadelphia, and if so, by how much less, and what was the occasion of such deficiency? Was the coal which was delivered to the said Clark & Van Winkle damaged or injured, and if so, by what was such damage or injury occasioned? Was there any delay in delivering the coal to Clark & Van Winkle; and if so, what was the occasion of the said delay?

To Patrick Campbell.

Fourth. Was the said barge raised, and by whom? By whom and where was she repaired? Were you or either, and if so, which of you employed in watching the said barge, and in superintending the raising and repairing of her, and if so, state what services you rendered in watching her, and what you rendered in superintending her raising and repairing? State what was the value of such services so rendered by you, and whether you were paid therefor, and if so, what sum you so received, and whether such services were necessary and proper, and if so, how?

Did you see the barge while she was in process of being raised and repaired; and if so, how frequently did you see her? State if you know by whom the barge was towed from where she sank to Red Hook, and by whom she was raised? Were the services which were rendered by Babcock necessary and proper services? Do you know by whom the barge was repaired, and if so, state? State how the raising and repairing the barge was done in respect to the character of the work, and the time within which it was done, and state whether

the work and services done in raising and repairing her were or not necessary and proper? State whether any, and if so, what portion of the work done in raising and repairing the said vessel was rendered necessary, by reason of the injuries received from the collision in the libel mentioned? State whether there was any work done to or repairs put upon the barge besides what was rendered necessary by reason of such injuries, and if there was, state what such extra work and repairs were?

Look at the bill hereto annexed marked A., and state whether any, and if so, what portion of the work, services, and materials therein charged, were rendered and furnished by Mr. Burtis, and whether any, and if so, what portion there was rendered necessary by the injuries so sustained by the collision? State whether the said barge was again in good order and fit for use after the collision.

To all the witnesses.

Fifth. State whether there was any demand for barges like the Owen Gorman in the months of April, May, June, and July, 1856, and if so, state whether such demand was great, or if not, how otherwise.

State what was the condition of the market as to freights in those months. What was the condition of the market as to the prices for the hiring of boats of that class at that time?

What was a fair price and charge according to the condition of the market at that time, for the use of the Owen Gorman per month, at the period above named? Name the sum, if any, which you can say could have been obtained for the use and hiring of her per month at the said period.

What amount could have been earned by her owner for the use and hire of said barge per month at that time? When coal barges are hired and chartered, by whom is the barge manned, at whose expense? What is a fair and reasonable price to be charged per month for the loss of the use of the barge, according to the current rates and prices for barges and freights at the period above named?

To all the witnesses.

Sixth. Do you know, and if so, state whether there is any custom or usage among coal barges carrying coal from Philadelphia to New York, and dealers with them, in respect to the place of delivery of cargo, where no particular street or wharf is specified in the bill of lading, and if so, what such usage is, and whether the same existed in the month of April, 1856.

To Patrick Campbell.

Seventh. State whether there was on board of said barge at the

time of the collision, and if so, what amount of clothing, provisions, and furniture, and if so, state of what the same consisted, and their value, and whether the same were injured or destroyed, and if so, to what extent and amount.

To all the witnesses.

Do you know of any other matter or thing material or which may tend to the benefit and advantage of the libellant, if so, state the same fully, as if especially interrogated thereto.

C. D. BURRILL,
Proctor for Libellant and Appellant.

I certify that the foregoing is a correct copy of the original interrogatories as settled herein.

KENNETH G. WHITE,
Clerk.

A Copy.
KENNETH G. WHITE,
Clerk.

Indorsed: United States Circuit Court. Patrick F. Brady, appellant, *against* The Steamboat New Philadelphia, the Camden and Amboy Railroad Company, respondents. Commission. Charles D. Burrill, for appellant.

The execution of this commission appears in certain schedules hereto annexed.

ROBERT P. KANE,
Commissioner.

Depositions of witnesses produced, sworn, and examined, on the fourteenth, fifteenth, seventeenth, nineteenth, and twenty-fourth day of January, in the year one thousand eight hundred and fifty-nine, at the office of Robert P. Kane, Esq., in the city of Philadelphia, under and by virtue of a commission issued out of the Circuit Court of the United States for the Southern District of New York, in a certain cause therein depending and at issue between Patrick F. Brady, appellant, and the steamboat New Philadelphia, and the Camden and Amboy Railroad Company, respondents.

ROBERT P. KANE,
Commissioner.

William Henry French, of the city of Philadelphia, rigger, aged twenty-six years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the libellant and appellant, doth depose and say, as follows:

First. To the first interrogatory he saith:

I am aged twenty-six years and upwards. I reside in the city of Philadelphia, at No. 22 Wilson street. My business is that of a rigger, and I followed that business in the summer of 1856.

Fifth. To the fifth interrogatory he saith:

There was a very great demand for barges like the Owen Gorman in the months of April, May, June, and July, 1856; during the months of April, May, and June, my father and myself were engaged in raising the receiving ship Union, which had been sunk at our Navy Yard, and we experienced very great difficulty in procuring the barges which we needed in our work. The condition of the market as to freight in those months was very good, and the prices at that time for hiring boats, I know to have been very high. Some barge-owners to whom we applied, asked for boats like the Gorman, as much as fifteen and twenty dollars per day, by the month. We offered Mr. Brady twelve dollars per day, for boats of that class. As we had frequently before that time hired boats from him, and as he was aware of the fact, that we were under contract to raise the receiving ship, he allowed us to have four of his barges at that rate. A fair price for the use of the Owen Gorman by the month, at that period, would have been three hundred and sixty dollars, or twelve dollars per day.

Four hundred and fifty dollars per month, or fifteen dollars per day, by the month, could have been obtained for the use and hiring of her at the said period.

Her owner could have earned that amount for the use and hire of said barge per month at that time.

When coal barges are hired and chartered, they are manned by the person who hires or uses them, and at his own expense. I cannot say what would be a fair and reasonable price to be charged per month, for the loss of the use of the barge, according to the current rates and prices for barges and freights, at the period above named. I should suppose four hundred and fifty dollars per month, the sum for which she could be hired, would be a reasonable charge for the loss of her use.

Sixth. To the sixth interrogatory he saith:

I know of a custom or usage which exists among coal barges, carrying coal from Philadelphia to New York, and dealers with them, in respect to the place of delivery of cargo, where no particular street or wharf is specified in the bill of lading. It is, that in such cases, the barge selects her own wharf for discharging and delivering cargo, and this custom or usage existed in the month of April, 1856.

To the last interrogatory he saith: I do not know of any other thing material, or which may tend to the benefit and advantage of the libellant.

WILLIAM H. FRENCH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the fourteenth day of January, 1859, before me,

ROBERT P. KANE,
Commissioner.

George French, of the city of Philadelphia, rigger, aged sixty-two years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed and examined on the part of the libellant and appellant, doth depose and say as follows:

First. To the first interrogatory he saith: My name is George French. I am sixty-two years of age. I reside at No. 107 Almond street in the city of Philadelphia. I follow the occupation of a rigger. I followed the same business in the summer of 1856.

Fifth. To the fifth interrogatory he saith: I know that there was a great demand for barges like the Owen Gorman in the months of April, May, June, and July, 1856. In the spring of 1856 my son William and myself were engaged under a contract to raise the receiving ship Union which had sunk at the Navy Yard here. We needed in our operations some four barges, and these we found it almost impossible to procure, only a few barge-owners having any boats or barges which they would consent to hire. Some of these parties to whom we applied asked as much as four hundred and fifty and five hundred and forty dollars a month for boats such as the Owen Gorman. We procured the four barges we wanted from Mr. Brady, the libellant in this case. We had frequently before this hired boats from him, and we regarded his letting us have the barges at the rate which he did as a personal favor; this rate was forty-eight dollars per diem for the four barges, or three hundred and sixty dollars per month for each of them.

I cannot of my own knowledge say what was the condition of the market as to freights in the months inquired of, but the condition of the market as to the prices for hiring boats was, as I have already stated, very high.

A fair price and charge according to the condition of the market at that time for the use of the Owen Gorman per month at the period named, would have been four hundred and fifty dollars. That price, I am convinced, could have been readily obtained for her. The owner could readily have earned that sum per month for the use and hire of the Owen Gorman.

When coal barges are hired and chartered, the general custom is that the person who hires the barge and uses her, is to man her at his own expense.

A fair and reasonable price per month for the loss of the use of the barge Owen Gorman, according to the current rates and prices for barges and freights at the period named, would have been four hundred and fifty dollars.

Sixth. To the sixth interrogatory, he saith: I know that there is a custom or usage among coal barges carrying coal from Philadelphia to New York, and dealers with them, in respect to the place of delivery of cargo where no particular street or wharf is specified in the bill of lading. The custom or usage is for the coal barge in such

cases to select her own wharf for the delivery of her cargo; such a usage existed in the month of April, 1856.

To the last interrogatory, he saith: I do not know of any other matter or thing material, or which may tend to the benefit and advantage of the libellant.

GEORGE FRENCH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this the fifteenth day of January, 1859.

ROBERT P. KANE,
Commissioner.

John Campbell, of the city of Philadelphia, boatman, aged twenty-one years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed and examined on the part of the libellant and appellant, doth depose and say as follows:

First. To the first interrogatory he saith: My name is John Campbell. I am aged twenty-one years and upwards. My occupation is that of a boatman. I followed that occupation in the summer of 1856.

Second. To the second interrogatory he saith: The cargo of the barge Owen Gorman on her voyage from Philadelphia to New York in April, 1856, consisted of two hundred and seven and a half tons of coal.

Third. To the third interrogatory he saith: The barge was directed to deliver the coal at the dock at the foot of Washington street in Brooklyn. The directions were given her before reaching New York. They were received by her at New Brunswick, where she arrived two or three days after she left Philadelphia. I do not now remember the day of the month. None of her cargo was taken out between the time she left Philadelphia and the time she was sunk. I left the barge the day she sank, and am unable to answer the remaining portions of the said third interrogatory, having no knowledge of the matters inquired of.

Fifth. To the fifth interrogatory he saith: There was a demand for barges like the Owen Gorman in the months of April, May, June, and July, 1856, and that demand was great. The condition of the market in those months as to freights was very good, and the market prices for hiring boats of that class were very high. A fair price and charge for the use of the Owen Gorman, at the period named, was twelve dollars per day, at that rate per month. Her owner, Mr. Brady, could have readily obtained that much for her use. He could have earned for the use and hire of that barge twelve dollars a day, or three hundred and sixty dollars a month, as prices then were.

When coal barges are hired and chartered they are manned by the person who hires and has the use of them, and at his expense.

A fair and reasonable charge per month for the loss of the use of the barge, according to the current rates and prices for barges and freights at the period named, would be three hundred and sixty dollars.

Sixth. To the sixth interrogatory he saith: There is a custom or usage among coal barges carrying coal from Philadelphia to New York, and dealers with them, in respect to the place of delivery of cargo, when no particular street or wharf is specified in the bill of lading. That custom or usage is for the master of the canal boat or barge to select the wharf or dock for the delivery of his cargo. Such a custom or usage existed in the month of April, 1856.

To the last interrogatory he saith: I do not know of any other matter or thing material, or which may tend to the benefit of the libellant.

JOHN CAMPBELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, this the seventeenth day of January, 1859, before me,

ROBERT P. KANE,
Commissioner.

A. H. Stilwell, of the city of Philadelphia, shipsmith, aged forty-two years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed and examined on the part of the libellant and appellant, doth depose and say as follows:

First. To the first interrogatory he saith: I am aged forty-two years and upwards. My name is A. H. Stilwell. I reside at No. 336 South Front street, in the city of Philadelphia. My occupation is that of a shipsmith. I followed that occupation in the summer of 1856.

Fifth. To the fifth interrogatory he saith: There was a demand for barges like the Owen Gorman in July, 1856, and I believe in the spring of that year. Although I cannot speak positively as to that. The demand in July was very great. I had purchased a sunken vessel, the brig Charles H. Frost, of Belfast, Maine, which had sunk with a cargo of coal on board of her in the river Delaware near to Red Bank, and in the month of July, 1856. I was desirous of employing boats to enable me to discharge and raise that vessel. I had great difficulty in obtaining any. I drove around to the place of business of a number of barge and boat owners, and did not succeed in obtaining them; the demand for boats was so great that I could not get them. I succeeded, however, at length in hiring a couple of barges such as the Owen Gorman from Mr. Brady, the libellant.

As to the condition of the market as to freights at the time inquired of, I cannot positively speak; I judge that it was very high, from the fact that the condition of the market as to prices for hiring boats of that class was at the time so high.

A fair price and charge according to the condition of the market at the period named for the use of the Owen Gorman per month, would have been twelve dollars per day or three hundred and sixty dollars per month. That sum per month could have been obtained for the use and hiring of her I know in July, 1856. I paid Mr. Brady for the two barges I got from him at that rate.

At that time the owner of the Owen Gorman could readily have obtained that sum per month for her use and hire. I believe that when coal barges are hired and chartered they are manned at the expense of the person who hires and uses them. I manned the barges which I got at my own expense. A fair and reasonable charge per month for the loss of the use of the barge, according to the current rates and prices for barges and freights at the period named, would have been three hundred and sixty dollars. This is my opinion, I cannot speak positively.

Sixth. To the sixth interrogatory he saith: I do not know of any custom or usage among coal barges carrying coal from Philadelphia to New York, and dealers with them in respect to the place of delivery under the circumstances referred to.

To the last interrogatory he saith: I do not know of any other matter or thing, material or which may tend to the benefit of the libellant.

A. H. STILWELL.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this the nineteenth day of January, 1859.

ROBERT P. KANE,
Commissioner.

Edward T. Hyatt of Philadelphia, foreman of the Philadelphia Gas Works, aged forty-two years and upwards, being duly and publicly sworn pursuant to the directions hereto annexed, and examined on the part of the libellant and appellant, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Edward T. Hyatt. I am aged about forty-two years. I reside in the city of Philadelphia at No. 2037 Locust street, and am the foreman of the Philadelphia. I filled the same position in the summer of 1856.

Fifth. To the fifth interrogatory he saith: I cannot say what demand existed for barges like the Owen Gorman in the months of April, May, June, and July, 1856. I do know, however, that such barges were extensively used in the transportation of coal for the Philadelphia Gas Works during those months. The coal was carried in barges like the Owen Gorman, which was also used for that purpose, from the upper to the lower wharves; it was carried in them from the wharves of the upper gas works to those of the lower works.

In those months freights were lively, and boats being scarce, the condition of the market as to the prices for hiring boats high. Mr.

Brady, who was the owner of the Owen Gorman, was under contract during those months to carry coal for the gas works, and when we needed boats he would be compelled at times to go out and hire them, all of his own being employed.

I should judge from the prices paid by us that the Owen Gorman was worth at a fair price and charge, according to the condition of the market at that time, ten to fifteen dollars per day. I cannot state in any other way what might have been obtained for her per month. This boat, the Owen Gorman, carried over 200 tons. We paid at the gas works at that time at the rate of 30 cents a ton. She would make a round trip in from four to five days, and at our rates of freight would make in four or five days $60. I think that our rates were rather under the market. We make the best bargains we can. We shipped coal all those months, and I think we paid at that rate during those months.

To the best of my knowledge when coal barges are hired, the hirer or owner mans her at his own expense. I cannot speak positively as to this. In my opinion, a reasonable and fair price per month for the loss of the use of the barge Owen Gorman, according to the current rates and prices for barges and freights at the period named, would have been from ten to fifteen dollars per day, say three hundred to four hundred and fifty dollars.

Sixth. To the sixth interrogatory he saith: I do not know of any custom or usage among coal barges carrying coal from Philadelphia to New York, and dealers with them, in respect to the place of delivery of cargo, where no particular street or wharf is specified in the bill of lading.

To the last interrogatory he saith: I do not know any other matter or thing, material or which may tend to the advantage of the libellant.

E. T. HYATT.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this twenty-fourth day of January, 1859, before me,

ROBERT P. KANE,
Commissioner.

Indorsed: Circuit Court United States, Southern District of New York. Patrick F. Brady, appellant, *v.* The Steamboat New Philadelphia and the Camden and Amboy Railroad Company, respondents. Commission of appellant to Philadelphia. Robert P. Kane, commissioner. Opened and filed this 21st day of February, 1859.

Canal boat Owen Gorman and owners,

1856.	To Divine Burtis, Dr.	
July 21,	To hauling out on ways, ...	$30 00
"	440 feet of oak, at 4 c.	17 60
"	1266 " " " plank, at 5 c. . . .	63 30
"	317½ lbs. spikes, at 10 c.	31 75

July 21,	To 132 lbs. oakum, at 10 c.		$13 20
	" Plugs 3½, one plank, 3½, ...		75
	" 19 lbs. cut nails, at 6 c.		1 14
	" Digs on ways, 2 days ex, at $5, . .		10 00
	" 1½ barrels pitch, at 24½, 2 mops at 4½c. .		5 50
	" 310 feet Geo. pine, at 4 c. . . .		12 40
	" 6 dressed boards, at 30 c.		1 80
	" 16 feet white pine, at 5 c. . . .		80
	" Hinges and screws, 5½, ...		62
	" ½ lb. wt. nails, at 6 c.		06
	" 15 feet deck plank, at 5 c. . . .		75
	" 90½ days' work, at 21½, ...		236 90
30,	" 21½ " " " 13½, ...		34 32
	" 10 lbs. start punches, at 4½, . . .		1 25
	" 38 lbs. bolts, at 10 c.		3 80
	" 7 rings, at 3 c., for pintle 2½, . . .		46
	" 42 lbs. screw bolts, at 10 c. . . .		4 20
	" for rimming irons, 8½, ...		1 00
			$471 60

Broot July 30, 1856.

Received payment.

DEVINE BURTIS.

Exhibit, March 16, 1859.

K. G. W.,
Comm'r.

NEW YORK, July 21, 1856.

No. 314.

The Hanover Bank,

Pay to William J. Babcock, or order, four hundred and sixty four $\frac{21}{100}$ Dollars.

CHARLES D. BURRILL.

$464 $\frac{21}{100}$.

Indorsed: W. J. Babcock, correct, C. D. Burrill.

BROOKLYN, August 6, 1859.

P. F. Brady,

To J. H. Van Winkle, Dr.

To bill of damages on cargo of coal for barge O. Gorman, as awarded by the referees, ... $231 12

Received payment.

S. H. VAN WINKLE.

Exhibit No. 2, on part of appellants.

K. G. W.,
U. S. Com.

Wm. J. Babcock, reck-master of the boat O. Gorman.
For services in discharging a cargo of coal from June 25 to July 5, 9 days, at $5 per day. $45 00
Received payment.

W. J. BABCOCK.

Exhibit No. 1, on part of appellants.

KENNETH G. WHITE,
U. S. Com'r.

NEW YORK, July 21, 1856.

No. 8.

The Hanover Bank,

Pay to William J. Babcock, or order, three hundred dollars.
300\frac{10}{100}$.

CHARLES D. BURRILL.

Indorsed: W. J. Babcock. Correct, C. D. Burrill.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY
agt.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c.

Sir: You will please take notice that a rule will be entered in the above action, that a commission issue therein on the part of Patrick F. Brady, the appellant, to Robert P. Kane, Esq., attorney and counsellor at law, of Philadelphia, in the State of Pennsylvania, to examine upon oath, upon interrogatories to be annexed to said commission, Patrick Campbell and John Campbell, boatmen, George A. Twibell, A. H. Stilwell, George French, William French, and E. T. Hyatt, of the same place, witnesses on the part of Patrick F. Brady. That the said appellant expects to prove by the said witnesses that the barge Owen Gorman left at Philadelphia with 207 tons of coal, and that the same by agreement was to be delivered to Clark and Van Winkle at the foot of Adams and Washington streets, Brooklyn; and that by reason of sinking of said barge Owen Gorman, under circumstances in the libel mentioned, a part of said cargo, about seven tons, was lost, and the residue was damaged and depreciated in quality and value; and that the residue of the said cargo was delivered to the said Clark and Van Winkle as soon as possible after the sinking of the said barge; and without any unnecessary delay; and that the delay in delivering the same was occasioned by the said sinking of the vessel and the consequent condition of the coal. That the said vessel was raised and repaired and put in order without any unnecessary and unreasonable delay, and as soon as circumstances would permit; and that the in-

juries sustained by the said vessel were repaired by Divine Burtis, and that the work, labor, and materials particularly specified in the account, already in evidence herein, were actually and necessarily rendered and performed; and that such work, labor, and materials were rendered necessary by reason of the injuries occasioned by the said sinking of the said vessel, and that the same were worth the sums so charged by the said Divine Burtis; and that the said barge, by reason of the said sinking, was rendered unfit for use; and that she was not repaired or put in order until the 30th day of July; and that the value of the use of the said barge was the sum of $125 per month; and that had the said barge not been so injured, the said appellant would have made and earned therewith the sum of $125 per month; and that the said vessel was, after the said sinking, made and rendered fit for use with all possible speed and dispatch; and that in addition to the said cargo, some clothing, provisions, and furniture were injured, and some lost; and that the value of that lost, and the amount of the injuring to that injured was $47 $\frac{50}{100}$.

That it was necessary to discharge the coal from the said barge after she had sunk, and wash and clean it and reship it on board of another barge for delivery to the consignees; and that it was also necessary to tow the said vessel; and that the services rendered by W. J. Babcock in regard thereto, and in and about the raising of the said barge, and the moneys paid for discharging and towage, as stated in the account introduced in evidence, and were necessary, reasonable, and proper, and worth the sums charged therefor. That by the custom among coal barges carrying coal from Philadelphia to New York or Brooklyn, and dealer with them, where no particular street or wharf is mentioned for the place of delivery, the barge is bound to deliver at such place in either of these cities as the shipper may designate; and that on the voyage on which the Owen Gorman was sunk, the coal, by the direction of the shipper, was to be delivered at the foot of Washington and Adams street, Brooklyn; and that Patrick Campbell rendered services in and about the watching, raising, repairing, and superintending the raising and repairing of the said barge and the discharging and reshipment of the said cargo, and that said services were necessary and proper, and were worth the sum of $120, and that that sum was paid therefor, and that said sum was a fair and reasonable compensation therefor, and that said services were rendered necessary by the sinking of the said barge.

C. D. BURRILL,
Proctor for Appellant.

To CAMBRIDGE LIVINGSTON, ESQ.,
Proctor for Respondent.

Exhibit A.

K. G. W.,
U. S. Commissioner.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY, appellant,
v.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c., THE CAMDEN AND AMBOY RAILROAD COMPANY, claimants, respondents.

Interrogatories to be administered to Patrick Campbell, John Campbell, George A. Twibell, A. H. Stillwell, George French, William French, and E. T. Hyatt, witnesses on the part of the libellants and appellants.

First. To all the witnesses.

What is your age, name, residence, and occupation, and what was your occupation in the summer of 1856?

Second. What did the cargo of the barge Owen Gorman consist of, on her voyage from Philadelphia to New York, in April, 1856, on which she was injured? If you say that it consisted of coal, state how many tons of coal the said barge had on board when she left Philadelphia.

Third. To Patrick Campbell and John Campbell.

Was the barge directed to deliver the coal at any particular dock in Brooklyn? and if so, at what dock was the said coal so directed to be delivered? Were said directions given before the barge reached New York? and if so, state when and where such directions were given. Was any of the cargo of the barge taken out of her between the time she left Philadelphia and the time she was sunk? After the barge sunk, what was done with the cargo? Was it taken out of the barge? and if so, what was done with it? Where was the barge when the coal was taken out of her? Was the coal taken out of her before or after the barge was removed to Red Hook? Was any part of the coal washed after it was taken out? and if so, what was the necessity, if any, of washing it? Was the quantity of coal which was finally delivered to Clark and Van Winkle less than that which was taken on barge at Philadelphia? and if so, how much less, and what was the occasion of such deficiency? Was the coal which delivered to the said Clark and Van Winkle damaged or injured? and if so, by what was such damage or injury occasioned? Was there any delay in delivering the coal to Clark & Van Winkle? and if so, what was the occasion of the said delay?

Fourth. Was the said barge raised? and by whom? By whom

and where was she repaired? Were you or either, and if so, which of you, employed in watching the said barge, and in superintending the raising and repairing of her? and if so, state what services you rendered in watching her, and what services you rendered in superintending her raising and repairing. State what was the value of such services so rendered by you, and whether you were paid therefor; and if so, what sum you so received, and whether such services were necessary, and if so, how. Did you see the barge while she was in the process of being raised and repaired? and if so, how frequently did you see her? State if you know by whom the barge was towed from where she sunk to Red Hook, and by whom she was raised. Were the services which were rendered by Babcock necessary and proper services? Do you know by whom the barge was repaired? and if so, state *state* how the raising and repairing of the barge was done, in respect to the character of the work, and the time in which it was done, and state whether the work and services done in raising and repairing her were or not necessary and proper. State whether any, and if so, what portion of the work done, and raising and repairing the said vessel, was rendered necessary by reason of the injuries received from the collision in the libel mentioned. State whether there was any work done to, or repairs put upon, the barge, besides what was rendered necessary by reason of such injuries; and if there was, state what such extra work and repairs were. Look at the bill hereto annexed, marked A., and state whether any, and if so, what portion of the work, services, and materials therein charged were rendered and furnished by Mr. Burtis, and whether any, and if so, what portion thereof was rendered necessary by the injuries sustained by the collision. State where the said barge was again in good order and fit for use after the collision.

To all the witnesses.

Fifth. State whether there was any demand for barges like the Owen Gorman in the months of April, May, June, and July, 1856; and if so, state whether such demand was great, or if not, how otherwise. State what was the condition of the market, as to freights in those months. What was the condition of the markets, as to the prices for the hiring of boats of that class at that time? What was a fair price, according to the condition of the market at that time, for the use of the Owen Gorman per month, at the period above named? Name the sum, if any, which you can say could have been obtained for the use and hiring of her per month, at the said period. What amount could have been earned by her owner for the use and hire of said barge per week, at that time? When coal barges are hired and chartered, by whom is the barge run, and at whose expense? What is a fair and reasonable price to be charged per month for the loss of the use of the barge, according to the current rates and prices for barges and freights at the period above mentioned?

To all the witnesses.

Sixth. Do you know, and if so, state whether there is any custom or usage among coal barges carrying coal from Philadelphia to New York, and dealers with them, in respect to the place of delivering of cargo, where no particular street or wharf is specified in the bill of lading, and if so, what such usage is, and whether the same existed in the month of April, 1856.

To Patrick Campbell.

Seventh. State whether there was on board of the said barge at the time of the collision any, and if so, what amount of clothing, provisions, and furniture, and if so, state of what the same consisted, and their value, and whether the same were injured or destroyed, and if so to what extent and amount.

Eighth. Do you know of any other matter or thing material or necessary, or which may tend to the benefit and advantage of the libellant, and if so, state the same fully as if especially interrogated thereto.

C. D. BURRILL,
Proctor for Libellants and Appellants.

Indorsed: Circuit Court. Patrick F. Brady *vs.* The Steamboat New Philadelphia, &c. Copy of interrogatories. C. D. Burrill, appellant's proctor.

To Cambridge Livingston, Esq.:

Sir: You will please take notice of the within proposed interrogatories, a copy of which is herewith served upon you, and that the same will be presented for settlement on the 15th November, 1858, at 11 A. M. Yours, &c.,

C. D. BURRILL,
Libellant's Proctor.

Dated November 6th, 1858.

Exhibit B.

K. G. WHITE,
U. S. Commissioner.

Circuit Court of the United States.

PATRICK F. BRADY
against
THE NEW PHILADELPHIA,
her tackle, &c.

William J. Babcock's bill for the raising, towing, discharging, and wharfage of the barge Owen Gorman, ... $808 50

J. H. Van Winkle's bill for damages done the cargo of coal by sinking of barge, . . .	$231 12
Deame & Burtis' bill for repairs, carpenter work, caulking, &c., ...	471 60
Detention of barge from April 17th to July 30th, 3 mo. 11 days, @ $125 per month, . .	421 00
Patrick Campbell's bill for services about barge, .	120 00
And for clothing and provisions lost by her sinking, ...	47 50
John Cook's bill for painting, ...	30 00
	$2129 22

Exhibit C.

K. G. W.,
U. S. Commissioner.

Circuit Court of the United States for the Southern District of New York.

PATRICK F. BRADY, libellant,
vs.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c.
} Commissioner's Report.

In pursuance of a decretal order made in the above entitled cause, on the 29th day of September, in the year of our Lord one thousand eight hundred and fifty-nine, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for damages, and to report thereon to this court with all convenient speed:

I, Kenneth G. White, Esq., the commissioner, to whom the matter was referred, do report, that I have been attended by the proctor for the libellant and the proctor for the claimant, and have taken and examined the testimony offered in support of the libellant's claim, and do find that there is due to the libellant the sum of three thousand one hundred and fifty-nine $\frac{34}{100}$ dollars.

Dated the 28th day of May, A. D. 1859.

All of which is respectfully submitted,
KENNETH G. WHITE,
U. S. Commissioner.

Indorsed: Vol. No. Circuit States Circuit Court for the Southern District of New York. Patrick F. Brady *vs.* The Steamboat "New Philadelphia," her tackle, &c. Proctor for libellant. Commissioner's report. Filed the 1st day of June, 1859.

United States Circuit Court.

PATRICK F. BRADY
v.
THE STEAMBOAT NEW PHILADELPHIA.

On motion of Cambridge Livingston, Esq., proctor for respondent, it is ordered that he have twenty days' time from the date hereof, to file his exceptions to the report of Kenneth G. White, Esq., to whom was referred the question of damages sustained by the libellant herein.

SAMUEL R. BETTS.

June 3, 1859.

United States Circuit Court.

PATRICK F. BRADY
v.
THE STEAMBOAT NEW PHILADELPHIA.

A motion of Cambridge Livingston, Esq., proctor for respondents, let the respondents have ten days from date to file exceptions to the report of the referee herein.

CHARLES A. INGERSOLL.

NEW YORK, June 23, 1859.

United States Circuit Court.

PATRICK F. BRADY
v.
STEAMBOAT NEW PHILADELPHIA.

The respondent hereby excepts to the report of the referee, Kenneth G. White, Esq., made herein, and by him filed, on the day of June, 1859.

First. Because the referee admitted in evidence two commissions, and testimony taken under the same, offered by the counsel for the appellants, dated respectively 17th and 23d November, 1858, on the ground that after reference no commission can issue without the order of the court; no testimony can be taken before the referee except what is oral, and such as has heretofore been evidence in the cause. The first commission objected to on the ground that the notice was short; the appellants gave notice for issuing of new commission, which superseded the first notice. Also on the ground that the interrogatories were never settled by any officer having power to settle the same. Second commission excepted to for same objections, and on the additional ground that the second commission was issued without any notice to the appellants, and appears to have been exe-

cuted by a commissioner different from the one named in the commission. It directs the examination of same witnesses on same interrogatories. That both commissions were issued without notice, and the interrogatories settled without notice, and copies of the interrogatories never served. And also because the referee allowed the appellants to withdraw a deposition taken under commission issued on 17th November, 1858, and executed by Charles B. Hazlett, filed on 23d November, 1858, having been heretofore offered in evidence, and the appellants having lost their power and control over it. And also because the deposition taken under a commission returned and filed 21st February, 1859, executed by Robert P. Kane, for the same objections as stated to the first two commissions, and for the further objection that no notice of any kind in relation to the issuing it, or the settlement of interrogatories, or service of copies of the same, was given to proctor of respondent, and they had no knowledge of its having issued until after its return.

Second. Because after the examination of the witness Bulkley, any further testimony for the respondent, as to the amount of damage occasioned by detention of the barge, and the value of the use of barge, during season 1856, from April to September, was excluded by the referee, although offered by respondent. And also for excluding the offers of respondent as set forth in Exhibit "A," hereto annexed, on the examination of the witness William Airgood.

Third. Because the referee found in his report, that the sum of $\$3159\frac{34}{100}$ dollars was due to the appellant, which was much larger than the sum legally proven at the reference.

a. The referee should not have allowed anything for the fifteen or twenty days that the barge remained idle in consequence of the neglect of the appellant to discharge cargo, mentioned in the testimony of Babcock. Also because the referee should not have allowed the $6 dockage during that time, and because he should not have allowed the additional $45 spoken of in said testimony, the same being included in the sum of $704 which, less $6, was the greatest amount the referee should have allowed for sums paid to the said Babcock.

b. There was not proper proof as to the amount of materials used, and labor performed in and about repairing the vessel Owen Gorman. 1st. The bill of Divine Burtis not being proof. 2d. If so, it appears that the entries were not posted from the original memorandum-book, slates, and scraps of paper, on the day of, or the day following the original entry thereof. 3d. Because the evidence of the labor of the men were simply the verbal statements that they had worked the time charged, none of the witnesses having sworn that they did so labor; and the proof as it stands is hearsay, there being no evidence that their labor was performed except from their books, and these entries being made from their hearsay statements.

c. There was no proper proof as to amount of damage to cargo. The evidence of usage testified to by Van Winkle is improperly re-

ceived, so as to allow any difference in the cartage of coal between place of delivery and place to which it was carted.

d. There was no proper proof of damages for loss of use of the barge, what rate of freight the barge was earning, it appearing she was actually on a trip, and carrying freight, at the time of the alleged collision. The value of the use of the barge not being proper evidence of the damages arising from her detention in this case; and because the referee admitted evidence of the price of the use of the barge, which was objected to, there being in evidence the rate of freight during that season, and also the size of the barge, and the largest number of trips she could have possibly made.

e. The weight of testimony on the question of damages sustained by loss of use of barge, showed that it could not have exceeded $2 50, or thereabouts, for detention of barge, per day, or $300 for the whole period of detention; whereas, the referee, to attain the result he has reported for, must have allowed a far greater amount. There were six witnesses on each side. The majority, if not all the witnesses of the appellant, were not shown to be competent to testify on this question, and their occupations, and their sources of information, were not such as would necessarily give them knowledge of this subject; whereas, the witnesses of the respondent were nearly all, if not all, men of long and great experience in the business, and by their testimony reduced the value to the amounts aforesaid. Also, the bill of the libellants, rendered after the hearing at circuit, is *prima facie* evidence of the amount of appellant's loss, and he could not recover over that amount.

Fourth. Because the referee ruled out the question to witness "O'Niel," to show how the earnings of witness's barge compared with that of barges of the same class; and, also, because he ruled out the other offers of the respondent, set forth in the testimony as taken by the referee not in these exceptions before specifically stated.

Fifth. Because the referee should not have allowed the appellant anything for wages of captain, or for clothes, or for utensils of captain. It does not appear that appellant ever paid the sums allowed, and the respondent can in no event be made liable for them. There was no necessity of the captain being kept under pay while the barge was not running. They are no part of direct injury to vessel or owner.

CAMBRIDGE LIVINGSTON,
Proctor for Respondent and Appellee.

Exhibit A.

By witness Airgood, respondent offered to show:

1st. That this witness, who was, in 1856, a captain of a barge in coal business, receiving freight, from his own knowledge knew, and

could testify, that a barge of the size of the Owen Gorman could not possibly earn over $5 a day, including man and boy.

2d. Offered to show that there were several meetings of barge-owners in spring of 1856, at which a fixed price was agreed upon, and that Brady assented to that price, and that by that agreement the Owen Gorman could not earn over $5 a day with a crew.

3d. Offered to show what the fair market value of barges of size of Owen Gorman, engaged in trade as the Owen Gorman was, was from April 15th to August 1, 1856.

4th. Offered to show that the Owen Gorman was run by her captain and not by Brady, and that the freights were received and contracts made by the captain.

5th. Offered to show that freights, from April 15th to August 1st, 1856, were not as high as they were in the fall of 1856.

6th. Offered to show that freights, in 1856, were less than in immediately previous and subsequent years. Offered by way of rebutting evidence, and excluded by the referee.

Indorsed: United States Circuit Court. Patrick F. Brady *v.* Steamboat New Philadelphia. Exception to report of referee. C. Livingston, proctor for respondent. Filed July 3, 1859.

At a special term of the Circuit Court of the United States of America, for the Southern District of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday, the 7th day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

PATRICK F. BRADY, libellant and appellant,
v.
THE STEAMBOAT NEW PHILADELPHIA, her tackle, &c.,
THE CAMDEN AND AMBOY RAILROAD COMPANY,
claimant and appellees.

This case having been brought to a hearing on the exceptions taken by the respondents and appellees to the report of Kenneth G. White, the commissioner to whom it was referred to assess the damages sustained by the libellant, by reason of the matters alleged in the libel. After hearing Washington Murray, Esq., advocate for the respondent and appellee, and John E. Burrill, Esq., advocate for the libellant and appellant, and due deliberation having been had, it is ordered, adjudged, and decreed, that the said report of the said commissioner be and the same is hereby amended, by deducting therefrom the following sums, namely, the sum of one hundred and eighty dollars for the use of said barge for the period of fifteen

days; also the sum of sixty dollars for the clothing of the master of the said barge, which was lost in said vessel; and the further sum of twenty-three dollars and fifty cents for the wages of the said master for the said period of fifteen days, which said items in the aggregate amount to the sum of two hundred and sixty-three dollars and fifty cents; and the said report be and the same is hereby in all other respects confirmed; and the exceptions thereto taken by the said respondent and appellee, except in the matters aforesaid, be and the same are hereby overruled; and that the said libellant recover herein the sum of twenty-eight hundred and ninety-eight $\frac{84}{100}$ dollars, being the amount reported to be due to him by the said report, after deducting the said sum of two hundred and sixty-three dollars and fifty cents, together with interest on the said sum of twenty-eight hundred and ninety-eight dollars and eighty-four cents from the first day of June, 1859, together with his costs to be taxed in the District Court and in the said Circuit Court.

And on like motion, it is further ordered, that a summary judgment be and the same hereby is entered against the said Camden and Amboy Railroad Company principal, and Franklin Cooley surety, for the sum of four thousand five hundred dollars, the amount of said stipulation given on the said appeal; and that the libellant have execution therefor to satisfy this decree.

To the honorable the Supreme Court of the United States of America.

The petition of appeal of the Camden and Amboy Railroad and Transportation Company, owners of steamboat New Philadelphia, claimants, respectfully showeth:

That heretofore, and on or about the 25th day of August, 1856, Patrick Brady filed his libel in the District Court of the United States for the Southern District of New York, claiming damages alleged to have been caused by the steamboat New Philadelphia aforesaid, and sustained by the barge Owen Gorman, owned by said Brady.

That thereafter an answer was duly filed, taking issue on such libel, and the cause was duly heard in said District Court by a decree thereof on the 27th day of March, 1858. The said court adjudged that the libel in this cause be dismissed with costs to the claimant; that after such decree the libellant appealed to the Circuit Court of the United States for the Southern District of New York; that the libellant duly prosecuted his appeal from said decree to the Circuit Court of the United States for the Southern District of New York in the second circuit, and the same was duly heard in said court; and that thereafter the said Circuit Court did order, adjudge, and decree, that said decree of the District Court should be reversed, and that the libellant recover against the said railroad company the sum of twenty-eight hundred and ninety-eight $\frac{84}{100}$ dollars with costs.

That your petitioners respectfully insist that the said decree is erroneous, and they appeal from the said decree and each and every part thereof, and pray that the Supreme Court of the United States may proceed to hear the said cause anew on new allegations and proofs, and to reverse and annul said decree of the said Circuit Court, and to restore to the appellants all rights which they have lost by reason of said decree.

CAMBRIDGE LIVINGSTON.

The Steamboat New Philadelphia, the Camden and Amboy Railroad Transportation Company, appellants.

Indorsed: Filed October 10, 1859.

Amended Bond for Costs.

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

PATRICK F. BRADY, libellant and appellant
v.
THE STEAMBOAT NEW PHILADELPHIA, &c., THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, claimants and appellees.

Know all men by these presents, that we, Ira Bliss, of No. 7 Battery place, of the city of New York, and Alfred Decher, of No. 16 Market street of said city, are held and firmly bound unto the above named Patrick F. Brady, in the sum of seven thousand five hundred dollars, to be paid to the said Patrick F. Brady, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twelfth day of October, in the year of our Lord one thousand eight hundred and fifty-nine.

Whereas, the above named claimants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above entitled suit, by the judge of the Circuit Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named claimants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

IRA BLISS. [L. S.]
A. DECHER. [L. S.]

Sealed and delivered, and taken and acknowledged, this 12th day of November, 1859, before me. Witness my hand and official seal.

JOHN BISSELL,
Notary Public.

United States of America, Southern District of New York, *ss.*

Ira Bliss and Alfred Decher, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of seven thousand five hundred dollars, over and above all his just debts and liabilities.

IRA BLISS,
A. DECHER.

Sworn to, this twelfth day of November, A. D. 1859, before me. Witness my hand and official seal.

JOHN BISSELL, [L. S.]
Notary Public.

I approve of the above amended bond and the sufficiency of the sureties thereto, and order that the same be filed as of the 14th of October, 1859, in this action on that date.

S. NELSON.

Indorsed: U S. Circuit Court. Patrick F. Brady *v.* The Steamboat New Philadelphia, The Camden and Amboy Railroad and Transportation Company, claimants. Bond for costs on appeal. Cambridge Livingston, claimant's proctor. Filed this 17th day of November, 1859, as of the 14th of October, 1859.

By the Honorable Samuel Nelson, judge of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit:

To Patrick F. Brady:

Whereas, the Camden and Amboy Railroad and Transportation Company, claimants, The Steamboat New Philadelphia, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States, for the Southern District of New York, in the second circuit, made in favor of you, the said Patrick F. Brady, against the said steamboat New Philadelphia, The Camden and Amboy Railroad and Transportation Company, and have filed the security required by law. You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the fifth day of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the Southern

District of New York, in the second circuit, the thirtieth day of October, in the year of our Lord, 1859, and of the independence of the United States the eighty-fourth.

S. NELSON.

CAMBRIDGE LIVINGSTON,
Proctor for Appellants.

Indorsed: Filed October 25, 1859.

United States Supreme Court.

THE STEAMBOAT NEW PHILADELPHIA, &c., THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, appellants and claimants,
v.
PATRICK F. BRADY, appellee and libellant.

Eastern District of Pennsylvania, *ss.*

Ezra B. Ely, of the city of Philadelphia, being sworn, saith, that he served on the appellee, Patrick F. Brady, on the twenty-second day of October, 1859, a copy of the citation in this case, signed by Hon. Samuel Nelson, associate judge of the Circuit Court of the United States, for the Southern District of New York, in the second circuit, dated 13th October, 1859, by delivering said copy of the citation to the said appellee personally, and leaving the same with him, at my office, 206 South Delaware avenue, Philadelphia.

EZRA B. ELY.

Sworn to this 22d day of Oct., 1859, before me, at Philadelphia.

CHARLES F. HEAZLITT, [L. S.]
U. S. Commissioner, East. Dist. Penna.

Indorsed: Filed October 25, 1859.

United States Supreme Court.

THE STEAMBOAT NEW PHILADELPHIA, &c., THE CAMDEN AND AMBOY RAILROAD AND TRANSPORTATION COMPANY, appellant and claimant,
v.
PATRICK F. BRADY, appellee and libellant.

Southern District of New York, *ss.*

Washington Murray, of the city of New York, being duly sworn, saith, that on the fourteenth day of October, 1859, at the office of Burrill, Davison & Burrill, attorneys at law, in the city of New York,

he served on the appellee, Patrick F. Brady, a copy of the appeal, and a copy of the citation filed in the cause with the clerk of the Circuit Court, in and for the Southern District of New York, by delivering a copy of said citation and said appeal to, and leaving the same with Charles A. Davison, Esq., personally, partner of Charles D. Burrill, Esq., proctor for above named Patrick F. Brady, said Burrill being absent from said office, and said Davison being in charge thereof; and deponent further says, that he has left a copy of said appeal for said appellee, also, at the clerk's office of the Circuit Court aforesaid; and, also, that a copy of said citation was duly served on said appellee personally, on the 22d of October, 1859, as appears from the annexed affidavit of Ezra B. Ely.

WASHINGTON MURRAY.

Sworn to this 25th day of October, 1859, before me.

R. E. STILWELL,
U. S. Commissioner.

Indorsed: Filed, October 25th, 1859.

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